

NO. 48781-1-II

COURT OF APPEALS, DIVISION II OF THE STATE OF
WASHINGTON

KITSAP COUNTY, a political subdivision of the State of Washington,

Respondent,

vs.

KITSAP RIFLE AND REVOLVER CLUB, et al.

Appellants,

and

IN THE MATTER OF NUISANCE AND UNPERMITTED
CONDITIONS LOCATED AT One 72-acre parcel identified by Kitsap
County Tax Parcel ID No. 362501-4-002-1006 with street address 4900
Seabeck Highway NW, Bremerton, Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

RESPONSE BRIEF OF APPELLEE KITSAP COUNTY

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I. INTRODUCTION

This appeal is the Kitsap Rifle and Revolver Club's ("the Club") attempt to re-litigate the scope of its legal non-conforming use—an issue on which the Club carried the burden during a 14 day bench trial that resulted in twenty pages of extensive, and primarily unchallenged, findings of fact. As a result of the Club's first appeal, the Court of Appeals affirmed that the following uses were not intensifications but unlawful expansions of the Club's legal nonconforming status: commercial, for-profit uses including military training uses and increasing the noise levels by allowing exploding devices, high caliber weaponry greater than .30 caliber, and practical shooting. *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn. App. 252, 272-274, 337 P.3d 328 (2014) (hereinafter "Published Opinion" or "*Kitsap Rifle*"). The Court of Appeals remanded the case back to the trial court to fashion an alternative remedy. *Id.* at 303-304.

From the beginning of the remand proceedings, the Club made clear its intent to re-try its case regarding the expanded uses issue and to insert new facts for this very purpose. The Club requested that the trial court allow further discovery, re-open the record, and engage in additional fact finding inquiries. The goal of these efforts was to provide the Club the opportunity to broaden its legal nonconforming use rights and re-litigate

issues on which it did not prevail in *Kitsap Rifle*.

Rather than allow the Club to re-try its case, the trial court carefully followed the holding of this Court and fashioned a remedy supported by both the governing law and the existing facts. The trial court's Supplemental Judgment declares that the expanded uses affirmed by this Court each constitute an expansion and enjoins only those very same uses.

The Club now challenges the Supplemental Judgment by attempting to argue confusion and ambiguity where there is none. The Club asks this Court to read the Supplemental Judgment as if it exists in a vacuum apart from both the relevant zoning regulations and the affirmed findings of the trial court. The Club asks this Court to declare that terms like "commercial use," a commonly used term in both zoning and general parlance, is ambiguous. The Club also feigns ignorance to other terms such as "practical shooting" despite the fact that this term has been used by the trial court, the appellate court, counsel for both parties, and witnesses during trial with great frequency throughout these proceedings.

In undertaking its review in this appeal, the Court must give the trial court great deference. The standard that applies to nearly every assignment of error by the Club is an "abuse of discretion" standard. Accordingly, to prevail in this appeal, the Club must establish that in

declining to re-open the record, declining to allow additional discovery, and in fashioning the terms of declaratory and injunctive relief, the trial court's decisions were "manifestly unreasonable or based on untenable grounds or reasons." *Clipse v. Commercial Driver Services, Inc.*, 189 Wn. App. 776, 787, 358 P.3d 464 (2015). The Club cannot meet this burden.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the trial court err when it issued a Supplemental Judgment declaring that the activities affirmed by the Court of Appeals to be expanded uses each constitute an expansion of the Club's legal nonconforming use and by entering an injunction enjoining only those activities? (Assignments of Error 3 and 4).

2. Did the trial court err in issuing a Supplemental Judgment that provides adequate notice to the Club of the conduct prohibited and required by the injunction. (Assignment of Error 5).

3. Did the trial court abuse its discretion when it declined to reopen the record, allow additional discovery, and enter additional findings of facts regarding post-trial circumstances at the Club's property and other facts that are irrelevant, non-dispositive facts, and/or not "new evidence." (Assignment of Error 1).

4. Did the trial court abuse its discretion when it declined to

reopen the record, allow additional discovery, and enter additional findings of facts regarding the scope of the Club's legal nonconforming use status when the expanded uses had already been determined and affirmed on appeal and when the Club already had an opportunity to present evidence on these issues during trial. (Assignment of Error 2)

III. EXTRANEOUS MATERIALS THAT SHOULD NOT BE CONSIDERED BY THE COURT

The Court should disregard extraneous materials relied upon and cited in the Club's Brief of Appellant. An appellate court is limited to a review of the official record. *City of Sumner v. Walsh*, 148 Wn. 2d 490, 495, 61 P.3d 1111 (2003). Generally, an appellate court may only direct additional evidence to be taken under very limited circumstances pursuant to RAP 9.11. See e.g. *Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 593-594, 849 P.2d 669 (1993). Importantly the additional evidence must be necessary to fairly resolve the issues on appeal and would have likely changed the trial court's decision. *White v. Skagit County*, 188 Wn. App. 886, 903, 355 P.3d 1178 (2015).

The Brief of Appellant improperly relies upon and cites to the "Declaration of M. Carter In Support of Mot. To Stay," with exhibits, which was filed with this Court on July 14, 2016 after the Club initiated its appeal. This document is outside the trial court record and was not before

the trial court during remand proceedings. Kitsap County cannot rebut or put this material into context without also relying on additional extraneous materials, which it declines to do as improper. The Court should disregard this document.

IV. STATEMENT OF THE CASE

A. Facts Regarding The Club's Activities And Expansions

When this case was previously before the Court in cause number 43076-2-II, the Club did not challenge the majority of the findings of facts contained in the trial court's original judgment entered on February 9, 2012. ("Original Judgment"). *Kitsap Rifle*, 184 Wn. App. at 267. Those unchallenged findings of fact control this case. CP 170-204 (2016) (Findings of Fact, Conclusions of Law and Order).¹

The Club's statement of facts incorrectly asserts that there are only two expansions of the Club's non-conforming use status—a commercial expansion and a "sound expansion." While the Court of Appeals classified two "categories" of expansions, it affirmed five separate activities which constitute the Club's expansion of use. *Kitsap Rifle*, 184 Wn. App. at 268.

According to the unchallenged findings of facts in the trial court's Original Judgment, the occurrence of the Club's expansion was not

¹ In this brief, Kitsap County distinguishes clerk's papers of the remand proceedings from clerk's papers of the trial court proceeding by indicating the date the clerk's papers were designated so as to be consistent with the approach taken by the Club in its Brief of Appellant.

limited to 2005 or 2006 and beyond but occurred from 1993 forward.² In 1993 the Club was granted its nonconforming use status. CP 173 (2016) (Finding of Fact (“FOF”) 10). Prior to 1993, the Club operated only two ranges on its property—a 150 yard rifle range and a smaller pistol range. CP 177 (2016) (FOF 29). The trial court found that as of 1993, shooting at the Club property was only occasional and usually on weekends and during the fall “sight-in” season (during which hunters would calibrate their scopes prior to hunting season). CP 177 (2016) (FOF 30). From 1996 forward, Club built several (at least 11) additional “shooting bays,” CP 178-179 (2016) (FOF 33-35), which, in contrast to pre-1993 activities, were “frequently” used for “regularly scheduled practical shooting practices and competitions” involving “rapid-fire shooting in multiple directions.” CP 188 (2016) (FOF 70).

While the noise emanating from the club affected the neighborhood and community “in the past five to six years,” the trial court did not find that the expansion was limited to that time frame. CP 192 (2016) (FOF 85). Some of the activities responsible for the increase in noise occurred infrequently in the early 1990’s as opposed to commonly and regularly “for hours at a time” in the years since. CP 191 (2016) (FOF 80-83). The

² This Court affirmed the 1993 date, holding “that the frequent and drastically increased noise levels found to exist at the Club constituted a fundamental change in the use of the property and that this change represented a **use different in kind than the Club’s 1993 property use.**” *Kitsap Rifle*, at 274 (emphasis added).

trial court determined that practical shooting was a complete change in use despite the Club's contentions that it had been engaged in practical shooting activities for some time. CP 200 (2016) (Conclusion of Law ("COL") 32). Specifically with regard to practical shooting, the trial court held that all practical shooting, not just practical shooting as it occurred prior to 2005, constituted a change in use and therefore was an expansion. CP 200 (2016) (COL 32).

B. Facts Regarding the Remand Proceedings

At the beginning of the remand proceedings, the Club issued its Third Set of Interrogatories to Kitsap County on August 26, 2015. CP 225, ¶3 (2016); CP 229-234 (2016). Kitsap County filed a Motion to Quash Discovery on August 27, 2015. CP 214-220 (2016). In response to Kitsap County's motion, the Club argued that it needed discovery to determine the new remedies advocated by the County during remand and "contentions" related to the same. CP 251, 253 (2016). After a hearing on this matter, the trial court granted Kitsap County's motion on September 4, 2015 and quashed the Club's interrogatories "without prejudice to refile." CP 400-402 (2016). The trial court judge ruled that it was

inappropriate to seek discovery until the court ruled on whether to reopen the record. RP vol. 1, 24-25 (Sep. 4, 2015).³

The Club filed a motion seeking to re-open the record on September 4, 2015 to allow further evidence regarding conditions at the Club's property since the 2011 trial. CP 370-377 (2016). The Club sought to reopen the record to show that "no additional conditions or limitations are required to abate sound from the Club" and because such evidence was relevant to fashioning a remedy for the expansions of use. CP 376-377 (2016). Kitsap County opposed this motion on the basis that no additional evidence was necessary and because the Club failed to identify the existence of any "new evidence." CP 781-783 (2016). In support of its reply on the matter, the Club offered a declaration from Club executive officer Marcus Carter as an offer of proof as to the testimony he would give if the record were reopened. CP 887-890 (2016). On October 30, 2015, the trial court denied "without prejudice" the Club's motion, after considering all the records and files. CP 398-399; RP vol. 2, 45-46 (Oct. 30, 2015). The trial court judge held that "if it becomes clear to me that the remedies proposed beg the issue of what's happened in the interim and

³ It appears that the verbatim report of the remand proceedings are not numbered pursuant to the procedure set forth in RAP 9.2(f)(2). For the sake of consistency, Kitsap County will reference the verbatim report of the remand proceedings in the same manner as the Club, by indicating the volume and date of the proceeding being cited.

there is need for additional evidence, then I would consider reopening the record.” RP vol. 2, 47 (Oct. 30, 2015).

On October 30, 2015 the trial court also heard oral argument from the parties regarding the effect of Kitsap County’s repeal of KCC §17.55.060. This issue was extensively briefed by both parties. CP 443-452 (2016) (memorandum by Kitsap County); CP 456-475 (2016) (memorandum by the Club). The trial court ruled that the repealed provision still governed the proceedings. CP 1340 (2016).

The parties then provided briefing as to their proposals for remand remedies. CP 912-936 (2016) (the Club’s briefing); CP 944-954 (2016) (Kitsap County’s briefing). The parties also each responded to the briefing provided by the other. CP 1029-1045 (2016) (response by the Club). In its response, the Club provided trial exhibits and transcripts of the trial proceedings, among other evidence, summarizing the Club’s activities from 2003 through 2010. CP 1050-1258 (2016). In support of its proposed remedy, the Club also presented a declaration from Principal Scientist and Environmental Planner Jeremy Downs as to his opinions regarding the permits needed to bring the Club’s property into compliance with the code. CP 938-940 (2016).

Kitsap County’s proposed judgment requested that the Original Judgment be incorporated and attached as an exhibit to the new judgment.

The Club objected to this, citing to case law and secondary sources regarding the need to eliminate extraneous materials, arguing that the new judgment “can and should stand alone.” CP 1328, lines 15-16 (2016). The Club argued it would be misleading to incorporate the Original Judgment because it included erroneous conclusions of law. CP 1328, lines 12-13 (2016). The Club also argued that the Original Judgment was a public record “on file with the Court.” CP 1329, line 19-20 (2016).

Following oral argument, the trial court adopted Kitsap County’s proposed judgment with several changes, including the Club’s request that the Original Judgment not be incorporated or attached. CP 1344 (2016). The trial court entered an Order Supplementing Judgment on Remand (“Supplemental Judgment” on February 5, 2016. CP 1339-1342 (2016).

The Club filed a motion for reconsideration, CP 1345-1355 (2016), which was denied. CP 1363 (2016).

V. ARGUMENT

A. The Supplemental Judgment Is Proper Because It Reflects the Court of Appeals’ Opinion and the Existing Findings of Fact Which Are Verities, Is Supported By Law, and Is Properly And Narrowly Tailored.

When considering whether to grant an injunction, the trial court has broad discretion to act in accordance with the circumstance of the case. *Washington Fed’n of State Employees, Council 28, AFL-CIO v. State*, 99

Wn. 2d 878, 887, 665 P.2d 1337 (1983). Trial courts are granted broad discretion “to shape and fashion injunctive relief to fit the *particular facts, circumstances, and equities of the case before it*. Appellate courts give great weight to the trial court's exercise of that discretion.” *Brown v. Voss*, 105 Wn. 2d 366, 372, 715 P.2d 514 (1986) (emphasis added). Thus, both the granting of an injunction and its terms are reviewed only for abuse of discretion. *Nw. Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, 173 Wn. App. 778, 789, 295 P.3d 314 (2013).

For the Club to prevail on its appeal, it must convince this Court that the trial court's Supplemental Judgment was manifestly unreasonable, arbitrary, or based on untenable grounds. The Club has failed in this effort. Critically, the Club does not challenge the propriety of an injunction prohibiting unlawfully expanded uses. Instead, the Club disagrees that the uses enjoined by the trial court constitute unlawfully expanded uses. It attempts to re-litigate an issue already determined on appeal (i.e., what uses are expansions and what uses are intensifications). The Club asks this Court to hold that the uses previously held and affirmed to be expansions are lawful intensifications that cannot be prohibited. The Club's position is incorrect as a matter of law. Because the remedy of enjoining those uses which are unlawful expansions is a remedy supported by Kitsap County

code and Washington common law, the Club cannot show an abuse of discretion by the trial court.

1. The Trial Court Properly Enjoined Commercial Uses, Military Uses, Practical Shooting, Weaponry Greater Than .30 Caliber, And Explosive Devices Because These Activities Are Not Within the Club's Established Non-Conforming Use

The Club's position that it was improper for the trial court to enjoin practical shooting, use of weaponry greater than .30 caliber, and use of explosive devices because these uses occurred occasionally on the Property prior to 1993, when its legal nonconforming use status vested, is incorrect. The Club's position ignores the trial court's findings, this Court's Opinion, and the well-established principles of zoning law. It was proper for the trial court to enjoin these activities because they were affirmed as unlawful expansions by the Court of Appeals and because these activities only occurred occasionally prior to 1993 such that they were not part of the Club's established legal nonconforming use under Washington law.

a. This Court Affirmed The Enjoined Activities As Expansions Rather Than Intensification

The trial court held as follows:

The actions by KRRC of:

(1) Expanded hours;

- (2) Commercial, for-profit use (including military training);
- (3) Increasing the noise levels by allowing explosive devices, high caliber weaponry greater than 30 caliber and practical shooting

Significantly changed, altered, extended and enlarged the existing use.

CP 193-194 (2016) (COL 8).

The Court of Appeals affirmed subparts two and three as follows:

The Club argues that the trial court erred in ruling that the Club engaged in an impermissible expansion of the existing nonconforming use by (1) increasing its operating hours; (2) allowing commercial use of the Club (including military training); and (3) increasing noise levels by allowing explosive devices, higher caliber weaponry greater than .30 caliber, and practical shooting. We hold that increasing the operating hours represented an intensification rather than an expansion of use, but agree that **the other two categories of changed use constituted expansions of the Club's nonconforming use.**

Kitsap Rifle, 184 Wn. App. at 268 (emphasis added).

The Court of Appeals also held as follows:

The trial court concluded that three activities “significantly changed, altered, extended and enlarged the existing use” and therefore constituted an expansion of use: “(1) expanded hours; (2) commercial, for-profit use (including military training); [and] (3) increasing the noise levels by allowing explosive devices [sic], high caliber weaponry greater than 30 caliber and practical shooting.” CP at 4075–76. We hold that the Club's increased hours did not constitute an expansion of its

nonconforming use. However, **we hold that the other two activities did constitute an impermissible expansion of use.**

Id. at 272–73 (emphasis added).

Accordingly, the Court of Appeals specifically held that the activities described in sub-part three are expansions rather than intensifications. The trial court properly enjoined these expanded uses.

b. As Matter of Law the Enjoined Activities Are Expansions of Use And Cannot Constitute Part of the Club's Established Legal Nonconforming Use

A nonconforming use is defined in terms of a property's lawful use as "established and maintained at the time the zoning [causing nonconformance] was imposed." *McMilian v. King County*, 161 Wn. App. 581, 591, 255 P.3d 739 (2011) (quoting *Miller v. City of Bainbridge Island*, 111 Wn. App. 152, 164, 43 P.3d 1250 (2002)). "The use of property must actually be established prior to the adoption of the zoning ordinance to qualify as a nonconforming use thereafter." *McMilian v. King County*, 161 Wn. App. 581, 591, 255 P.3d 739 (2011) (quoting *Anderson v. Island Cty.*, 81 Wn.2d 312, 321, 501 P.2d 594 (1972)).

A nonconforming use is established only if use began before the applicable zoning ordinance was adopted, the use was lawful before the ordinance was adopted, the landowner did not abandon the use, and the use was **continuous, not occasional or intermittent.** *Jefferson Cty. v.*

Lakeside Indus., 106 Wn. App. 380, 385, 23 P.3d 542, *amended*, 29 P.3d 36 (2001) (citing *North/South Airpark Ass'n v. Haagen*, 87 Wn. App. 765, 772, 942 P.2d 1068 (1997)) (emphasis added). The burden of proving the existence of a prior nonconforming use is on the landowner. *Id.*

According to the unchallenged findings of fact, commercial uses, military uses, the use of exploding devices, the use of high caliber weaponry, and practical shooting uses did not occur continuously on the Club's Property prior to 1993. Commercial uses did not occur at all prior to 1993. CP 177 (2016) (FOF 29 and 30); CP 189-190 (2016). The Property was only used for military training exercises on one occasion prior to 1993. CP 189 (2016) (FOF 72). Use of cannons or explosives was "not common." CP 191 (2016) (FOF 87). Practical shooting occurred in the Club's shooting bays. CP 188 (2016) (FOF 70). These bays were developed from 1996 onward. CP 178 (2016) (FOF 33). The findings also provide that "[r]apid fire shooting, use of automatic weapons, and use of cannons" only occurred infrequently in the early 1990's. CP 191 (2016)(FOF 83). These findings show that the uses in question were not continuous uses at the Club's property prior to 1993.

In arguing that the Supplemental Judgment is improper, the Club cites to evidence it presented during the 2011 bench trial to show practical shooting took place at the Property prior to 1993. The Club's argument in

this regard should be given no weight. The Club ignores that the existing findings of fact inherently capture and reflect the trial court judge's credibility determinations, which were made with the benefit of *all* evidence presented during the trial court proceedings. The trial court's credibility determinations may not be reviewed or disturbed on appeal and so the existing findings of fact must be given great deference. *Bloor v. Fritz*, 143 Wn. App. 718, 731, 180 P.3d 805 (2008) (Appellate courts will not disturb trial court's credibility determinations). Critically, the Club did not challenge the existing findings of facts regarding its practical shooting activities, or its other activities, in the prior appeal.

The written findings of fact show that the enjoined activities, if they occurred at all prior to 1993, did not occur continuously on the Property. To the extent these activities occurred prior to 1993, they did so only occasionally or intermittently. Washington law dictates that these activities were not part of the club's established legal nonconforming use. Consequently it is proper for the trial court to enjoin these uses in their entirety.

This result is also required in order to give meaning to other findings of fact and conclusions of law in the trial court's Original Judgment. The Original Judgment most succinctly summarized the Club's expansions when it stated as follows:

The Club's conversion from a small-scale lightly used target shooting range in 1993 to a heavily used range with an enlarged rifle range and a 11-bay center for local and regional practical shooting competitions further constitutes a dramatic change in intensity of use (and of sound created thereby) [...].

CP 200 (2016) (COL 33).

The trial court also determined that the Club's pre-1993 use was "best described as a private recreational facility" and concluded that all uses inconsistent with a "private recreational facility" use are expansions. CP 198 (2016) (COL 25(b) and 26). These uses included training of law enforcement officers and military personnel, "use of rifles of calibers greater than common hunting rifles," and "professional level competitions." CP 198 (2016) (COL 25(b)).

2. It Was Proper For The Trial Court To Enjoin Those Activities That Are The Cause of The Sound Impacts

The Club argues that there are only two expansions—the commercial expansion and the "sound expansion." The Club argues that it was improper for the trial court to enjoin all practical shooting, weaponry greater than .30 caliber, and explosive devices because these activities were not expansions in and of themselves and, instead, it was the noise impacts resulting from these activities which were held to be the "sound expansion." This position ignores the context and well-established principles of land use/zoning law and advocates a position that subverts

the Published Opinion.

While the Club advocates that it was the increase in sound alone and not the sound-causing activities that constitutes the expanded use, sound is not a “use” as the term is defined and applied in Kitsap County’s zoning code. Accordingly, the trial court correctly recognized during the remand proceedings that it is the underlying sound-causing activities that constitute the unlawful expanded uses. RP vol. 3, 12-13 (Dec. 11, 2015). For this reason, the trial court did not abuse its discretion in enjoining the sound-causing activities as expanded uses.

a. Sound Is Not A “Use” Within The Context of Kitsap County’s Zoning Ordinance

The trial court’s Original Judgment must be read within the context of well-established zoning principles. As the underlying cause of action against the Club was for violation of Title 17 Kitsap County Code (“Zoning Ordinance”), the orders and remedies should be read in the context of that ordinance (as it existed at the time of the trial court proceedings).⁴

KCC §17.110.005 provides, in pertinent part, as follows:

Except as provided in Section 17.450.010, for the

⁴ Kitsap County adopted its 2016 Comprehensive Plan Update as required by RCW 36.70A.130(5)(b) on June 27, 2016. As part of the update, Title 17 KCC was amended, renumbered, and reformatted by Ordinance 534-2016. All citations in this brief are to the former code, except for repealed KCC §17.455.060. The relevant excerpts of the former code is attached as Appendix A. Repealed KCC §17.455.060 is attached as Appendix B.

purpose of this title, certain terms, phrases, words and their derivatives shall be construed as specified in this section and elsewhere in this title where specific definitions are provided.

One of Kitsap County's claim against the Club was that it violated the Zoning Ordinance by expanding beyond its non-conforming use status. Legal nonconforming uses are directly regulated by the Zoning Ordinance. Accordingly, to the extent the terms of the injunction are defined by the Zoning Ordinance, those definitions apply. The Zoning Ordinance defines a "use" as "the nature of occupancy, type of activity or character and form of improvements to which land is devoted." KCC §17.110.730. This definition limits a "use" as being an "activity" or "improvement" "to which land is devoted." Sound is neither an activity nor an improvement. It is an impact resulting from an activity. By this very definition, sound cannot be a "use."

Further assessment of the provisions of and context provided by the Zoning Ordinance support this position. The Zoning Ordinance classifies the County into "zones" which are given certain classifications (e.g., rural wooded, urban low residential, regional commercial, mixed use). KCC §17.200.010. For each zone classification, the Zoning Ordinance outlines the types of uses that are permitted, conditional, and prohibited. KCC §17.381.010-020. Conditional uses may be allowed

either following review by the Department of Community Development Director “to establish conditions mitigating impacts of the use and to ensure compatibility with other uses,” KCC §17.381.010(B), or subject to review by a hearing examiner to establish “conditions to protect public health, safety and welfare.” KCC §17.381.010(C).

There are a variety of uses outlined in KCC Chapter 17.381. The Zoning Ordinance recognizes that “every conceivable use cannot be identified” and establishes the Director of Community Development’s “authority to compare a proposed use and measure it against those listed” in the Ordinance for determining similarity. KCC 17.100.040. Some of the uses identified by the Zoning Ordinance include the following:

- Bed and Breakfast
- Residential Care Facility;
- Brew Pubs
- Conference Center
- General office and management services
- General retail merchandise
- Laundromats and laundry services
- Personal services—skin care, massage, manicures, etc.
- Food production
- Rock Crushing
- Forestry

Comparing the many uses identified in the Zoning Ordinance, and in consideration of the Ordinance’s definition of the term “use,” it would be unreasonable for the trial court to view an impact such as sound or noise as a “use” within this context. Furthermore, the Zoning Ordinance

distinguishes between uses and impacts and treats the two differently. The Zoning Ordinance specifically regulates uses and, with respect to an administrative conditional use, provides the Director with authority “to establish conditions mitigating impacts of the use.” KCC §17.381.010(B). In addition, “obnoxious” impacts are specifically called out and prohibited in KCC §17.455.110 which states that “no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses.”

While the Club attempts to conflate the concept of an impact with the concept of a use, this is not a logical understanding of the affirmed trial court rulings. The reasonable understanding of the affirmed trial court rulings, and the understanding required as a matter of law, is that the use of explosive devices, high caliber weaponry greater than .30 caliber, and practical shooting constitute the Club’s unlawful expansions while sound is the impact of these expanded uses.

3. The Injunction Is Reasonable And Not Abuse Of Discretion Even If Sound is the Expansion

Even assuming sound, rather than the underlying activities that cause the sound, constitutes the expansion in this case, the trial court did not abuse its discretion in enjoining the underlying activities as an expansion remedy.

Every court has “inherent power to enforce its decrees and to make such order as may be necessary to render them effective.” *Ronken v. Board of County Com'rs of Snohomish County*, 89 Wn.2d 304, 311-12, 572 P.2d 1(1977). The authority to grant injunctive relief is conferred by superior courts pursuant to article 4, §6 of the Washington State Constitution. *State v. Lew*, 25 Wn.2d 854, 865–68, 172 P.2d 289 (1946) (in which the court affirmed an injunction to abate a nuisance despite the fact there was no statutory provision expressly authorizing injunctive relief); *Blanchard v. Golden Age Brewing Co.*, 188 Wn. 396, 405, 63 P.2d 397 (1936) (holding that the judicial power over cases in equity has been vested in the courts independently of any legislative enactment). It is the duty of the court to “exercise its equity power and grant the necessary relief” “upon a clear showing of necessity in order to afford immediate protection of a complainant's right.” *Id.* at 405.

In light of the trial court’s broad grant of equitable power and in light of the discretion afforded trial courts when reviewing injunctions on appeal, the trial court did not err in enjoining all those activities which were found (and affirmed) to have caused “increasing noise levels.”

The Court of Appeals affirmed the trial court’s original conclusion of law that “increasing the noise levels *by allowing* explosive devices, high caliber weaponry greater than .30 caliber and practical shooting

significantly changed, altered, extended, and enlarged the existing use.” CP 194 (2016) (COL 8)(bold and italics added for emphasis). *Kitsap Rifle*, 184 Wn. App. at 263 and 272. It was fully within the trial court’s discretion to restrict explosive devices, high caliber weaponry, and practical shooting when the “allowance” of such was affirmed to have caused an expanded use.

4. Declaratory Judgment Properly Declares Military Training Uses, Commercial Uses, Explosive Devices, High Caliber Weaponry, and Practical Shooting To “Each Constitute Unlawful Expansions”

The Club appears to challenge the declaratory injunction on the basis that it declares military training uses, commercial for-profit uses, and uses increasing noise levels by allowing explosive devices, high caliber weaponry, and practical shooting to “each constitute unlawful expansions of and changes to the nonconforming use of the Property as a shooting range” rather than to consider there to only be two expansions—commercial use and sound expansions. The Club’s appeal in this regard must fail because the declaratory judgment properly reflects the governing law, the trial court’s findings of facts, and the Published Opinion.

In reviewing a declaratory judgment on appeal, the appellate court “reviews the trial court’s findings of fact for substantial evidence and the trial court’s conclusions of law de novo.” *Kitsap Rifle*, 184 Wn. App. at

267 (citing *Nw. Props. Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, 173 Wn. App. 778, 789, 295 P.3d 314 (2013)). The pertinent findings of fact in this case are now verities on appeal as they were unchallenged in the prior proceeding and remain unchallenged in this proceeding.⁵ *Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 176 Wn.2d 662, 675, 295 P.3d 231 (2013) (unchallenged findings of fact become verities on appeal). Accordingly, in reviewing the declaratory judgment contained in the Supplemental Judgment, this Court's review of the findings of fact is limited to ascertaining whether they support the conclusions of law.

a. Commercial and Military Uses Constitute Separate Expansions

Commercial and military uses each constitute an expansion which is not limited in scope to just certain specific activities. The findings of fact reveal that during the 1990s, U.S. Naval personnel are said to have individually conducted firearm qualification exercises at the Property. CP 189 (2016) (FOF 72). This is the only use found to have occurred at the Property that could potentially describe pre-1993 military uses. This activity was expressly described as being limited to qualification exercises and not organized military training exercises. *Id.*

⁵ In its prior appeal, the Club only challenged findings of fact 23, 35, 26, and 57. The remaining unchallenged findings were deemed to be "verities" on appeal. *Kitsap Rifle*, 184 Wn. App. at 267, n.11.

The trial court also found that Sharon Carter registered a for-profit business at the Property's address in 2002. CP 189 (2016) (FOF 73) This for-profit business rented out the Property on a per-day basis. CP 189-190 (2016) (FOF 74 and 75). The Property was rented by other for-profit businesses who used the Property to carry out organized military training. CP 189-190 (2016) (FOF 74 and 75). On other occasions, active duty Navy personnel conducted firearms exercises that were not sponsored through for-profit business. CP 191 (2016) (FOF 78). On one occasion, a military "Humvee" vehicle, fitted with a fully automatic machine gun, was parked in the rifle range and fired small bursts down range. CP 191 (2016) (FOF 78).

Essentially, there were no established commercial or military uses at the Property prior to 1993. Prior to 1993, the Club's use was limited to that of a recreational facility. Any and all commercial and military use constitutes an unlawful change and expansion beyond the original use.

b. Explosive Devices, High Caliber Weaponry, and Practical Shooting Each Constitute Separate Expansions

The Club asserts that the uses of explosive devices, high caliber weaponry, and practical shooting that were held to increase noise on the property constitute a single "sound expansion" rather than separate individual expansions. This is not supported by the findings of fact for two

reasons described below.

First, the trial court made independent findings regarding noise or sound with respect to the activities. In discussing practical shooting, the trial court described “loud rapid-fire shooting” in “multiple directions” occurring throughout the day in the shooting bays. CP 188 (2016) (FOF 70). The approximately one dozen shooting bays were created from 1996 forward and thus did not exist at the time that the Club’s legal nonconforming use right vested in 1993. CP 178 (2016) (FOF 33). Separately, the trial court found that exploding targets and cannons cause loud “booming” sounds in residential neighborhoods and cause houses to shake. CP 192 (2016) (FOF 86). In a separate finding, the court identified all those activities that it found to increase the noise level emanating from the property. CP 192 (2016) (FOF 85). These activities included commercial use of the club for explosive devices, high caliber weaponry, and practical shooting competitions.

Second, the trial court’s findings do not suggest that the increase in noise only occurred when all of the noise-causing activities occurred at the same time, which would be the required logical conclusion if all three activities constituted one expansion of use. To the contrary, the trial court’s findings clearly contemplate that each activity on its own increased the noise in a disruptive manner and thus each constituted an individual

expansion.

5. The Injunction Is Properly Tailored

As explained above, the injunction enjoins only those activities that were determined by the trial court and affirmed by the Published Opinion to be expansions. During remand proceedings, the trial court corrected its error of declaring the Club's legal nonconforming use status terminated and enjoining all shooting range activities at the Property as a remedy for its expanded uses and instead tailored a new injunction to prohibiting only those activities that constitute an expanded use. Furthermore, the trial court's injunction does not forever bar the Club from engaging in these expanded uses. To the contrary, the Club can engage in expanded uses as allowed pursuant to a conditional use permit. CP 1368 (2016).

The Club's reliance on *Chambers v. City of Mount Vernon*, 11 Wn. App. 357, 522 P.2d 1184 (1974) is misplaced. In that case quarry operations at a specific location were held to be a nuisance but the trial court's injunction was too broad because it prohibited the City from conducting "any quarry operation" at all and not just the quarry operations at the specific location at issue. *Chambers*, 11 Wn. App. at 362. The injunction in this case is limited to the Property at issue.

Mathewson v. Primeau, 64 Wn. 2d 929, 395 P.2d 183 (1964) is also distinguishable. That case involved a contempt sanction prohibiting the

raising of all pigs on defendant's property as a sanction for violating a public nuisance injunction which merely limited the number of pigs that could be raised. *Id.* at 930, 937. The contempt sanction went far beyond the public nuisance injunction that the sanction was meant to remedy. *Id.* Unlike *Mathewson*, where the issue in controversy was limited to a public nuisance impact arising from a property's use, the issue in controversy in this appeal is the expansion of property's use in and of itself.

Christensen v. Hilltop Sportsman Club, Inc., 61 Ohio App. 3d 807, 573 N.E.2d 1183 (1990) is also distinguishable in that it also deals with a public nuisance rather than an expansion of use, which is analytically different. The public nuisance injunction in controversy prohibited any and all shooting activities, much like the Original Judgment. *Id.* at 812. The Supplemental Judgment only prohibits the expanded uses.

B. The Supplemental Judgment Complies With Civil Rule 65(d) and Is Not Impermissibly Vague, Ambiguous, or Otherwise Improper

1. Court Rule 65(d) Only Requires That the Club Have Adequate Notice of the Enjoined Activities

The Club argues that the trial court's injunction does not meet the technical requirements of Civil Rule (CR) 65(d). The Club's argument ignores that Washington and Federal courts have read flexibility into the rule and only require that the Defendant have adequate notice of the

enjoined activities. CR 65(d) provides for the form and scope of an injunction. While there is limited published Washington case law interpreting CR 65(d), federal case law may be used for guidance. *All Star Gas, Inc., of Washington v. Bechard*, 100 Wn. App. 732, 736-737, 998 P.2d 367 (2000).

Federal Courts have routinely found that the purpose of Fed. R. Civ. P. “Rule” 65(d) is to ensure that adequate notice is provided to the party bound by the injunction. *State of Cal., on Behalf of California Dep’t of Toxic Substances Control v. Campbell*, 138 F.3d 772, 783 (9th Cir. 1998). So long as that purpose is met, many courts allow flexibility in the application of Rule 65(d) to take into account the specific facts and circumstances of the case. See e.g. *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1133 (9th Cir. 2006) (“[T]he fair notice requirement of Rule 65(d) must be applied ‘in the light of the circumstances surrounding [the order’s] entry.’”) quoting *United States v. Christie Indus., Inc.*, 465 F.2d 1000, 1002 (3d Cir.1971); *Fed. Election Comm’n v. Furgatch*, 869 F.2d 1256, 1263 (9th Cir. 1989). In other words, the standard for whether an injunction meets the requirements of Rule 65(d) is whether the injunction provides notice to the party bound, at the point of litigation the injunction is entered, as to the acts that are

prohibited. *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 927 (D.C.Cir.1982).

2. The Supplemental Injunction Provides Adequate Notice to the Club as to What Activities are Prohibited.

Under CR 65(d) and Rule 65(d), injunctions should be upheld unless “they are so vague that they have no reasonably specific meaning.” *United States v. V-1 Oil Co.*, 63 F.3d 909, 913 (9th Cir. 1995) (quoting *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1297 (9th Cir.1992)). Injunctions do not need to “describe every conceivable action or possibility to meet the requirements for specificity. ‘Reasonable detail’ is sufficient.” *Snyder v. Haynes*, 152 Wn. App. 774, 782, 217 P.3d 787 (2009). Generally, a court order will be enforced according to the plain meaning of its terms as well as the circumstances surrounding its issuance. *R/L Assocs., Inc. v. City of Seattle*, 113 Wn.2d 402, 410, 780 P.2d 838 (1989). Because injunctions must provide adequate notice to the party bound to ensure the party knows what actions may lead to contempt, it is logical to review an injunction by its plain meaning and within the context of the litigation leading up to its issuance.

The Club attempts to insert ambiguity and vagueness into the trial court’s supplemental injunction by disregarding the plain meaning of the terms of the injunction and the circumstances surrounding its issuance.

The injunction provides sufficient details in the context of the litigation to provide adequate notice to the Club of the acts it is enjoining.

a. Practical Shooting Uses are Clear in the Context of the Litigation

The Club alleges that the prohibition on “practical shooting, uses, including organized competitions and practice sessions” is vague because the term “practical shooting” is not defined in the Supplemental Judgment.⁶ The Club’s argument fails to account for the context in which the order was entered and feigns ignorance as to a term that it has explained and defined to its own members on several occasions.

The term “practical shooting” has been used throughout all stages of this litigation including by witnesses pre-trial and during trial, the trial court in its Original Judgment, and both parties and this Court on appeal. For example, during trial the Club’s expert Mr. Hayes was asked by the Club’s own counsel “what is practical shooting?” RP 335 (2012). Mr. Hayes answered by describing the term. CP 336 (2012). The Club did not challenge the trial court’s use of the term practical shooting throughout the Original Judgment. The Club did not have any trouble understanding the

⁶ The Club also argues that the comma between practical shooting and uses opens up the possibility that it potentially enjoins all uses of the property. The comma is a clear clerical error which the Club, if concerned, could have moved to correct after the judgment was entered. CR 60(a); RAP 7.2(e).

term as it was used and discussed in the appellate proceedings that led to the Published Opinion.⁷

Most critically, however, is the fact that the Club circulated newsletters defining and explaining practical shooting to its own members and/or the public, specifically answering the questions “What is practical pistol shooting?” CP 394-395 (2012), and “Practical Shooting....what it’s all about.” CP 443 (2012).

b. The Term “Explosive Devices” Is Clear and Unambiguous

The phrase “use of explosive devices including exploding targets” is also clear from both the Original Judgment and the record throughout this litigation. The Original Judgment, under the heading “Explosives and Exploding Targets,” notes that (1) the Club allowed the use of exploding targets and cannons on the property which caused loud booming sounds and (2) that the use of cannons or explosives were not common before 1993. CP 192 (2016) (FOF 86 and 87). The conclusion in the Original Judgment that “increasing the noise levels by allowing explosive devises, higher caliber weaponry greater than .30 caliber and practical shooting significantly changed, altered, extended and enlarged the existing use”

⁷ The Club used the term “practical shooting” during its first appeal to this Court of the Court’s Original Judgment. Brief of Appellant, *Kitsap County v. Kitsap Rifle and Revolver Club*, No. 43076-2-II, at 32-33. Kitsap County acknowledges this brief is not part of the record on appeal and therefore cannot be reviewed by this court, but believes it is worth noting that the Club never raised an issue with the term practical shooting until the end of the remand proceedings.

was upheld in *Kitsap Rifle*. CP 194 (2016) (COL 8(3)). Exploding targets, and cannons are also referenced. CP 196; 203 (2016) (COL 21). The Club's attempt to obfuscate the plain meaning of "exploding devices" previously understood by both parties and outlined in the trial court's Original Judgment should be disregarded by the Court.

c. Commercial and Military Uses are Clear on their Face and in Context of this Litigation and the Zoning Ordinance

An injunction's purpose is not to punish for past wrongful acts, but is instead to "restrain present or threatened future wrongful acts." *Lewis Pac. Dairymen's Ass'n v. Turner*, 50 Wn. 2d 762, 776, 314 P.2d 625 (1957). Land use injunctions help protect the character of a neighborhood, which is preserved by the zoning code, both from current and future violations. *City of Mercer Island v. Steinmann*, 9 Wn. App. 479, 486, 513 P.2d 80 (1973). The Supplemental Injunction prevents future violations of Kitsap County's Zoning Ordinance, by prohibiting the Club from allowing uses on their property found by both the trial court and this Court to be expansions or changes of the Club's non-conforming use. Therefore, the injunction must be read in the context of both the litigation and the zoning code.

The phrases "commercial, for profit uses" and "military training uses" are not vague or ambiguous. In its argument the Club fails to

articulate its reasoning, instead relying on a blanket, unsupported statement that there are many unanswered questions. The questions stated by the Club in footnote 11 do not account for the findings of fact in the Original Judgment or the common understanding of both the word “commercial” and “use.” Under the heading “Commercial and Military Uses of the Property” the trial court outlined the previous commercial and military uses of the property. CP 189-191 (2016) (FOF 71-79). Commercial uses included for-profit firearms training at the property. CP 187-191 (2016). Military training uses included organized training practice that was done under contract with the U.S. Navy as well as use of military equipment on the range. CP 189-190 (2016) (FOF 74, 78).

The terms in the injunction have to be viewed through the lens of the Zoning Ordinance. Generally, a use is an expansion if it violates the Zoning Ordinance. As previously stated, the “use” of a property is defined as “the nature of occupancy, type of activity or character and form of improvements to which land is devoted.” KCC §17.110.730. Many of the “questions” posed by the Club overlooks this fundamental definition. An activity that does not have any bearing on the use of land, such as the one-time sale of t-shirts by an events vendor, is not an activity to which land is devoted and therefore is not a “use.” By contrast, turning a portion of the Property into a t-shirt shop would be a commercial, for-profit use that

violates the Zoning Ordinance. See KCC §17.381.040(E) (Parks, Rural, and Resource Zones Allowed Use Table). Furthermore the Club paying for services from outside businesses, for example septic maintenance or landscaping, is not a use of the Property.⁸

The remaining questions posed by the Club do not take into account the plain language of the terms “commercial” or “for profit.” These terms are readily and reasonably understood and the dictionary definition of these terms would provide their plain language meaning. Any reasonable Club member or officer should be able to answer the question as to whether a specific activity is being done “for profit” or not. All in all, the Club’s argument that the term “commercial” must be more specifically defined in order for the injunction to be proper because that term is ambiguous is an absurdity.

To the extent there is any question as to the permissiveness of specific conduct under the injunction, these questions have to be resolved in the manner specifically set forth in the Zoning Ordinance. This entire lawsuit is code-driven, from the causes of action to the remedies. The Zoning Ordinance itself provides that it is the “responsibility of the

⁸ To suggest otherwise would lead to absurdity in Kitsap County’s Zoning Ordinance. Under the Club’s interpretation, a family who owns a single family residence in a residential zone where commercial uses are prohibited could never hire a contractor to repair their house, a landscaper to help with their yard, a septic maintenance company to test and maintain their septic system, or a babysitter to watch their children. Yet, we all know that this is not true.

[Director of the Department of Community Development] himself/herself to interpret ambiguous and/or conflicting code and apply the provisions” of the Zoning Ordinance. KCC §17.455.010. To the extent there is ambiguity as to the term “use” in the context of a zoning issue, there is no reason to depart from the provisions of the Zoning Ordinance in this regard. There is also no reason to require the judiciary to perform an administrative task which is specifically reserved for the director.

3. The Injunction Remediating the Club’s Site Development Violations Complies with CR 65(d)

The Club’s assertion that because the Supplement Judgment references findings made in the Original Judgment, it does not comply with CR 65(d) contradicts both Federal and State court holdings which have allowed outside documents to be referenced by injunctions when the circumstances warrant it. For example, in *Snyder v. Haynes*, 152 Wn. App. 774, 217 P.3d 787 (2009), the court upheld an injunction that referred to findings of facts and documents describing the road which was the subject of the litigation. *Id.* at 782.

Additionally, the Ninth Circuit often allows injunctions to refer to other documents so long as the party who is enjoined has adequate notice of what is prohibited. *State of Cal., on Behalf of California Dep’t of Toxic Substances Control v. Campbell*, 138 F.3d 772, 783 (9th Cir. 1998). The

documents do not even need to have been part of the record. *Davis v. City & Cty. of San Francisco*, 890 F.2d 1438, 1450–51 (9th Cir. 1989) (Fire Officers had adequate notice of the conduct prohibited by an injunction which referred to Fire Department rules that were already binding on the officers.) This interpretation is not limited to the ninth circuit. See *Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 809 (2d Cir. 1981).

There is no question that the Club had adequate notice of the activities required (permitting for unlawful site development) as well as access to the Original Judgment. Further, the violations referenced by the trial court were not only litigated during the trial but were also part of the Club's first appeal. See *Kitsap Rifle*, 184 Wn. App. at 275. The Club cannot claim inadequate notice.

Judicial estoppel also bars the Club's argument. Judicial estoppel precludes a party from asserting a position in one court proceeding and later asserting an inconsistent position for its own advantage. *Arkison v. Ethan Allen, Inc.*, 160 Wn. 2d 535, 538, 160 P.3d 13 (2007). Judicial estoppel is appropriate when: (1) a party's position is inconsistent with its previous position, (2) the court's acceptance of the inconsistent argument in the second proceeding would create an impression that the first or second court was misled; and (3) the party asserting the inconsistent

position would unfairly benefit or cause unfair detriment to the opposing party. *Id.* at 539.

All three factors apply here. At the trial court level counsel for the Club objected to Kitsap County's proposed Supplemental Judgment which specifically incorporated and attached the Original Judgment. CP 1328, lines 15-16 (2016). The Club also argued that an appropriate remedy for the unlawful site development would reference the trial court's findings in the Original Judgment. Vol. 3 RP at 32 (2016). By substantially prevailing, the Club created its own appeal issue. The Club would unfairly benefit if the Supplemental Judgment could be voided or overturned on an appeal issue it created when it prevailing at the trial court level.

C. The Trial Court Did Not Abuse Its Discretion In Denying the Club's Requests to Reopen the Record, Allow Additional Discovery, and Make Additional Findings of Fact

A trial court's discovery rulings as well as its rulings regarding a motion to reopen a case are subject to review for abuse of discretion. *Ameriquist Mortg. Co. v. Office of Attorney Gen. of Washington*, 177 Wn.2d 467, 478, 300 P.3d 799 (2013) (discovery rulings); *Zackovich v. Jasmont*, 32 Wn.2d 73, 81, 200 P.2d 742 (1948) (motions to reopen a case). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *Ameriquist Mortg.* 177 Wn.2d at 478. In other words, it must be a

decision that no reasonable person would take. *Cclipse*, 189 Wn. App. at 787. The trial court's decision regarding reopening the record will only be overturned on appeal for "manifest abuse." *Sweeny v. Sweeny*, 52 Wn.2d 337, 339, 324 P.2d 1096 (1958).

Under Washington law, cases in which an appellate court disturbed a trial court's exercise of discretion with respect to re-opening the record appear to be few and far between. The only such case cited by the Club was the case of *Rochester v. Tulp*, 54 Wn.2d 71, 337 P.2d 1062 (1959). In *Rochester*, it was abuse of discretion for the trial court to refuse to allow additional evidence not reasonably available during prior proceedings on the dispositive issue of the running of the statute of limitations. *Id.* at 74. By contrast, there are many examples of appellate courts upholding a trial court's decision not to reopen the record. Trial courts refuse to disturb such an exercise of discretion if the additional evidence is cumulative or was reasonably available at the time of trial. *Tsubota v. Gunkel*, 58 Wn.2d 586, 591, 364 P.2d 549 (1961) (no evidence produced to suggest evidence would not have been available at trial); *Rogers Walla Walla, Inc. v. Ballard*, 16 Wn. App. 81, 90, 553 P.2d 1372 (1976) (decision to not reopen record upheld when evidence was available with reasonable diligence at trial); *Williams v. Burrus*, 20 Wn. App. 494, 497, 581 P.2d 164 (1978) (decision to not reopen record upheld when evidence to be

added was cumulative); *Fuller v. Ostruske*, 48 Wn.2d 802, 808, 296 P.2d 996, 1000 (1956) (affirming trial court's denial of motion to reopen the record when the moving party did not meet its burden of showing newly discovery evidence).

In this case, the trial court did not abuse its discretion in declining to reopen the record during remand proceedings or allow additional discovery.

1. No Need For Additional Evidence Where Remedy Was Clear Under Law And Substantial Findings Already Existed

The trial court did not abuse its discretion in declining to conduct additional fact finding because the proper remedy was clear under the law and because there were already substantial findings to support the remedy. This Court's instruction to the trial court was to fashion a remedy, other than termination of the Club's non-conforming use, for the Club's unlawful site development activities and unlawfully expanded uses. *Kitsap Rifle*, 184 Wn. App. at 301. The appropriate remedy for violations of Kitsap County Code is dictated by the Kitsap County Code and by Washington law—a mandatory injunction to prohibit unlawful uses and require compliance as proscribed by the code itself.

The Kitsap County Code expressly authorizes a mandatory injunction to remedy “any use, building or structure in violation of [Kitsap

County Code Title 17].” KCC §17.530.030.⁹ As the Club’s unlawful expansions of its otherwise legal nonconforming use had already been affirmed by this Court, there were no outstanding issues of fact to be determined regarding the issue of remedy. Any additional evidence regarding the unlawful expansions would have been cumulative and available to the Club at the time of trial. The trial court’s Original Judgment already contains voluminous findings of fact sufficient to support an injunction remedy. This task did not require any additional discovery or fact finding and the trial court did not err in declining to allow discovery and make additional findings of fact.

2. Additional Facts Regarding The Property Since Trial Are Irrelevant And Not Dispositive

The Club argues that it should have been permitted to conduct discovery and present new evidence regarding the “four year period between the fall 2011 trial and the remand proceedings.” Appellant’s Brief, page 30. Post-trial events, circumstances, and conditions on the Property are irrelevant in this case. This Court and Kitsap County Code authorized the trial court to fashion an injunction to address the expanded uses and permitting violations affirmed by this Court. *Kitsap Rifle*, 184 Wn. App. at 301; KCC 17.530.030.

⁹ This provision deems any use, building or structure in violation of the code to be unlawful and a per se public nuisance which may be abated by mandatory injunction.

As stated by the Club, injunctions are forward looking remedies. Accordingly, the land use injunction was designed to prohibit the reoccurrence of the expanded uses based upon the past violations found to have occurred at the Property. Even if the Club temporarily retreated from the expanded uses after the trial, such conduct would not prohibit the trial court from fashioning a remedy to prevent unlawful uses from reoccurring in the future.¹⁰ Otherwise the Club could restart its expanded uses any time at will.

The Club's assertion that additional discovery and fact finding regarding post-trial circumstances was necessary to determine whether the public nuisance injunction abated the expansions of use is incorrect. The Club was found to have both expanded unlawfully beyond its nonconforming use status **and** to have posed a public nuisance through safety and noise conditions on the Property. To remedy its unlawful expansion, the Club must stop the uses that constitute the expansion, and return to its original non-conforming uses or obtain a conditional use permit. KCC §17.455.060 ("The hearing examiner shall review and approve requests for alteration or enlargement of the use or structure

¹⁰ The Club asserts that the trial court should have taken into account the Club's limited operations under the Court of Appeal's stay order. The stay order was a temporary order and would not have restricted the Club's activities following a ruling on this appeal. Kitsap County is not required to rely on the Club's voluntarily limiting its own conduct after these issues have been decided. In short, Kitsap County is entitled to a remedy to enforce its code provisions and prevent the expanded uses from reoccurring.

through the conditional permit review procedures as set forth in Chapter 17.420.”). For the affirmed public nuisance conditions, the trial court’s remedy prohibits uses constituting public nuisances. In order for the uses and activities which are the subject of the trial court’s judgments to continue on the Club’s property, they must be lawful in both regards. They must no longer constitute an unlawful expansion and no longer constitute a public nuisance. Any overlap between the nuisance and expanded use injunctions is appropriate to remedy both violations.

During the remand proceedings, the Club recognized the analytic distinction between unlawful expansions of use and public nuisances and recognized that there could be overlap despite the differing legal standards. RP vol. 3, 15-16 (Dec. 11, 2016). The Club’s argument challenging the propriety of overlapping remedies in this appeal is disingenuous.

3. Additional Facts Regarding the Club’s Commercial Activities Is Not “Newly Discovered Evidence,” Is Irrelevant, And Is Not Dispositive

The Club argues that the trial court should have reopened the record to consider additional facts regarding its reliance on third party commercial business for the provision of essential services. In its motion to reopen the record, the Club did not seek to present additional facts regarding its reliance on third-party businesses. Instead it sought to reopen

the record regarding current conditions at the Property.

The Club's argument that evidence regarding the activities of third-party businesses on its property is newly discovered evidence is disingenuous because the nature and extent of the Club's uses of the Property was squarely at issue and before the trial court during the original trial proceedings. To the extent the Club feels these facts are relevant, these facts should have been presented during the trial proceedings, especially since the Club had the burden to prove the establishment and scope of its nonconforming use status. *Jefferson Cty. v. Lakeside Indus.*, 106 Wn. App. at 385.

The evidence presented before the trial court during the original trial proceedings allowed the trial court to render over two pages of factual findings regarding the Club's commercial and military use of its Property. CP 189-190 (2016). The Club has made no showing, nor can it reasonably argue, that its reliance on third-party businesses was unknown to it at the time of trial.

Finally, additional facts regarding the Club's reliance on third-party business to provide services on its Property is irrelevant to the issues resolved during the remand proceedings and such additional evidence would have had no effect in the outcome of the remand proceedings for reasons outlined in Section A above.

4. Additional Facts Regarding Interests of the Parties Are Not “Newly Discovered Evidence,” Are Irrelevant, And Are Not Dispositive

The Club appears to argue that the trial court abused its discretion when it declined to reopen the record for purposes of balancing the interests of the parties and the public. The Club failed to establish how evidence regarding the interests of the parties in this case is newly discovered, necessary for the remand proceeding, and not cumulative of the existing record.

A balancing requirement does not necessitate new findings of fact on remand. The Club’s reliance on *Steury v. Johnson*, 90 Wn. App. 401, 957 P.2d 772 (1998) is misplaced. The factual inquiry in that case involved the extent to which the owner of a servient estate may place reasonable restrictions on an easement over his land. In deciding this particular issue, trial courts are required to, in consideration of the specific facts and circumstances, weight the relative burdens “of the dominant and servient estates.” *Id.* at 407. The holding in *Steury* is limited to easements and does not apply here.

In its briefing, the Club does not point to any specific fact regarding the interests of the parties that the trial court should have considered and failed to consider. During the remand proceedings the Club did not assert nor does it argue now that its interests have changed.

The Club has failed to meet its burden of establishing the need for any new evidence regarding the relative interests of the parties.

During the remand proceedings, the Club did not assert that additional facts were needed for the trial court to properly weigh the interests of the parties, did not request to present such evidence, and made no objection on this basis. The Club cannot raise new issues for the first time on appeal. RAP 2.5. If there was an error, the Club deprived the trial court an opportunity to correct the error and laid in waiting allowing the error to continue.

5. The Additional Discovery Sought By the Club Was Not Dispositive, Was Irrelevant and Was Improper

Even had the trial court felt it necessary for additional discovery and new evidence to be presented on remand, the additional discovery sought by the Club was improper and did not pertain to the specific issues that the Club now argues required additional fact-finding during the remand proceedings (i.e., post-trial facts regarding the Property, reliance on third-party business, and interests of the parties). Instead, the Club's discovery sought Kitsap County's intentions, legal opinions, and positions with regard to a proposed remedy and with regard to potential future

permitting decisions. For example, Interrogatory No. 18¹¹ states as follows: “Identify the specific factual and legal issues the County will ask the trial court to decide on remand, along with any specific remedies the County will request.” CP 230 (2016).

The Club’s discovery requests also attempted to supplant Kitsap County’s permitting procedure by requiring the County to provide its positions and decision regarding potential future land use permit applications before such applications had been submitted. Interrogatory No. 20 states: “What conditions would the County impose as part of a conditional use permit to allow the Club to engage in the type of expansion referenced in Interrogatory No. 19 above (referring to the expansions of use regarding commercial firearms training activities).” CP 231 (2016).

D. Trial Court Did Not Abuse Its Discretion When It Issued a Remedy For the Club’s Expanded Uses Without Reopening the Record or Allowing Additional Discovery

The trial court did not abuse its discretion when it issued an injunction to address the Club’s expanded uses without first reopening the record with regard to the frequency and scope of certain activities and their sound impacts because the expanded uses had already been affirmed

¹¹ The discovery requests propounded to Kitsap County by the Club during the remand proceedings were titled Kitsap Rifle and Revolver Club’s Third Set of Interrogatories to Plaintiff and started with Interrogatory No. 18.

on appeal. *Kitsap Rifle*, 184 Wn. App. at 272-274.

The Club asserts that additional facts are required to draw a clear line between intensifications versus expansions on its property. This is based upon the Club's incorrect position that its uses can only constitute an improper expansion of its nonconforming use to the extent such uses cause a certain level of "increasing noise levels." This is mistaken, as discussed further in Section A, because the three enjoined uses were never, as a matter of law, part of the Club's established legal nonconforming use and were affirmed as expansions, rather than intensifications, on appeal. *Id.* at 272-273. In this regard, it was proper for the trial court to enjoin such activities without any additional fact finding.

Finally, the Club already had its opportunity to present evidence regarding historic noise levels at the property. The Club's trial brief for the original trial proceedings even stated that it would do so. CP 1954-1065 (2012).¹² Though the trial court did not reopen the record during remand proceedings, the Club presented substantial documentary and testimony evidence that was already in the record of the trial court proceedings to argue its positions. CP 887-890 (2016), 938-940 (2016), 1050-1258

¹² "The Club will offer testimony and evidence confirming the level of noise is well within reasonable and historic levels, along with testimony from neighbors who do not find the noise excessive or bothersome at all. Audio recordings taken by one of the County's most vocal noise complainants will further demonstrate that the distant sounds from the Club are no louder than other noises typically heard in the neighborhood, such as airplanes flying overhead or the sounds of nearby birds and chipmunks."

(2016).

VI. CONCLUSION

For the foregoing reasons, the Court should affirm the rulings of the trial court during remand proceedings and uphold the trial court's Supplemental Judgment as a proper exercise of its discretion and broad authority to grant equitable relief.

VII. NOTIFICATION OF ADDITIONAL CASES

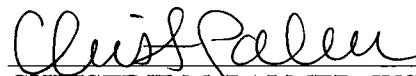
For informational purposes only, Kitsap County hereby notifies the Court of the existence of following additional cases between the parties:

COA Cause No: 49130-3-II

COA Cause No.: 50011-6-II

Respectfully submitted this 20th day of March, 2017

TINA ROBINSON
Prosecuting Attorney



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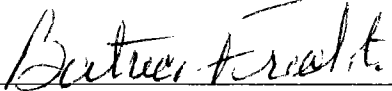
CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Brian D. Chenoweth	<input checked="" type="checkbox"/>	Via U.S. Mail
Brooks Foster	<input checked="" type="checkbox"/>	Via Email:
The Chenoweth Law Group	<input type="checkbox"/>	Via Hand Delivery
510 SW Fifth Ave., Ste. 500		
Portland, OR 97204		

SIGNED in Port Orchard, Washington this 20th day of March,
2017.


BATRICE FREDSTI, Legal Assistant
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992

Appendix A

Pages from 2014 Title 17

**Title 17
ZONING****Chapters:**

- 17.100 General Provisions
- 17.110 Definitions
- 17.200 Establishment of Zones and Maps
- 17.300 Forest Resource Lands (FRL)
- 17.301 Rural Wooded Zone (RW)
- 17.305 Rural Protection Zone (RP)
- 17.310 Rural Residential Zone (RR)
- 17.315 Urban Reserve Zone (URS)
- 17.318 Poulsbo Urban Transition Area
- 17.321 Limited Areas of More Intensive Rural Development (LAMIRD)
- 17.321A Suquamish Rural Village
- 17.321B Port Gamble Rural Historic Town
- 17.321C Manchester Rural Village
- 17.321D Keyport Rural Village
- 17.322 (Repealed)
- 17.325 Urban Restricted Zone (UR)
- 17.326 Illahee Greenbelt Zone (IGZ)
- 17.330 Urban Low Residential Zone (UL)
- 17.332 Senior Living Homestead Zone (SLH)
- 17.335 Urban Cluster Residential Zone (UCR)
- 17.340 Urban Medium Residential Zone (UM)
- 17.350 Urban High Residential Zones (UH)
- 17.351 Multi-Family Development – Design Criteria
- 17.352 Mixed Use Zone (MU)
- 17.353 Urban Center Zones
- 17.354 Urban Center Zones – Design Criteria
- 17.355 Commercial Zones

- 17.360 Business Park Zone (BP)
- 17.365 Business Center Zone (BC)
- 17.370 Airport and Industrial Zone
- 17.375 Airport Zone (A)
- 17.376 Rural Employment Center and 12 Trees Employment Center Zone
- 17.377 Parks Zone (P)
- 17.378 Gorst Subarea
- 17.380 Mineral Resource (MR)
- 17.381 Allowed Uses
- 17.382 Density, Dimensions and Design
- 17.383 Development Regulations for Public Sewer Systems, Community Sewage Disposal Systems and Large On-Site Sewage Systems
- 17.385 Landscaping
- 17.400 Land Use Review
- 17.405 (Repealed)
- 17.415 Master Planning
- 17.420 Administrative Conditional Use Permit
- 17.421 Hearing Examiner Conditional Use Permit
- 17.425 Performance Based Development
- 17.428 Master Planning Requirements for the ULID #6/McCormick Woods Sub-Area
- 17.430 Transfer of Development Rights
- 17.435 Off-Street Parking and Loading
- 17.445 (Repealed)
- 17.446 Sign Code
- 17.450 (Repealed)
- 17.455 Interpretations and Exceptions
- 17.460 Nonconforming Uses, Structures and Use of Structures
- 17.465 Marijuana Regulations
- 17.470 Wireless Communication Facilities
- 17.500 Variances
- 17.510 (Repealed)

17.520 Appeals

17.525 Revocation of Permits or Variances

17.530 Enforcement

17.640 (Repealed)

- G. KCC Title 15 (Flood Hazard Areas)
- H. KCC Title 16 (Land Division and Development);
- I. KCC Title 18 (Environment);
- J. KCC Title 19 (Critical Areas Ordinance);
- K. KCC Title 20 (Transportation);
- L. KCC Title 21 (Land Use and Development Procedures);
- M. KCC Title 22 (Shoreline Management Master Program);
- N. Chapter 36.70A RCW, Growth Management Act, and Chapter 36.70B RCW, Local Project Review;
- O. Kitsap Countywide Planning Policies;
- P. Kitsap County Comprehensive Plan and Sub-Area Plans;
- Q. Kitsap County Buildable Lands Report;
- R. Kitsap County Greenways, Bicycle & Mosquito Fleet Trail Plan;
- S. Kitsap County Parks, Recreation & Open Space Plan;
- T. Kitsap County Comprehensive Solid Waste Plan;
- U. Chapter 43.21 RCW, State Environmental Policy Act; and
- V. Chapter 58.17 RCW, Plats – Subdivisions – Dedications.

(Ord. 415 (2008) § 4, 2008: Ord. 216 (1998) § 4 (part), 1998)

17.100.030 Compliance.

No building or other structure shall be constructed, improved, altered, enlarged, or moved; nor shall any use or occupancy of premises within the county be commenced or changed; nor shall any condition of or upon real property be caused or maintained, after the effective date of this title, except in conformity with conditions prescribed for each of the several zones established hereunder. It shall be unlawful for any person, firm, or corporation to erect, construct, establish, move into, alter, enlarge, use or cause to be used, any buildings, structures, improvements, or use of premises contrary to the provisions of this title, provided, however, conditions of approval as referred to in the changes to zones, amendments and alterations section, and the existing uses referred to in the interpretations and exceptions section, shall be allowed to continue in the manner and extent provided for therein. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control.

(Ord. 415 (2008) § 5, 2008: Ord. 216 (1998) § 4 (part), 1998)

17.100.040 Allowed uses.

Except as provided in Chapter 17.465, when a use is not specifically listed in this title, it shall be understood that the use may be allowed if it is determined by the director that the use is similar to other uses listed. It is further recognized that every conceivable use cannot be identified. In anticipation that new uses will evolve over time, this section establishes the director's authority to compare a proposed use and measure it against those listed in this title for determining similarity. In determining similarity, as well as when considering all other uses, the director shall make all of

17.110.740 Veterinary clinic.

17.110.745 Water-dependent use.

17.110.750 Water-enjoyment use.

17.110.755 Water-oriented use.

17.110.760 Water-related use.

17.110.765 Wireless communication antenna array.

17.110.770 Wireless communication facility.

17.110.775 Wireless communication support structure.

17.110.780 Whip antenna.

17.110.782 (Repealed)

17.110.783 Wrecking yard.

17.110.785 Yard.

17.110.790 Yard, front.

17.110.795 Yard, rear.

17.110.800 Yard, side.

17.110.805 Zone.

17.110.005 Generally.

Except as provided in Section 17.450.010, for the purpose of this title, certain terms, phrases, words and their derivatives shall be construed as specified in this section and elsewhere in this title where specific definitions are provided. Terms, phrases and words used in the singular include the plural and the plural the singular. Terms, phrases and words used in the masculine gender include the feminine and the feminine the masculine. The word "shall" is mandatory. The word "may" is discretionary. Where terms, phrases and words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The most current version of the English Webster's Dictionary shall be considered as providing ordinary accepted meanings.

(Ord. 415 (2008) § 11, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.010 Abutting.

"Abutting" means adjoining with a common boundary line; except that where two or more lots adjoin only at a corner or corners, they shall not be considered as abutting unless the common property line between the two parcels measures ten feet or greater in a single direction. Where two or more lots are separated by a street or other public right-of-way, they shall be considered "abutting" if their boundary lines would be considered abutting if not for the separation provided by the street or right-of-way.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.015 Access.

"Access" means the place, means, or way by which pedestrians and vehicles shall have safe, adequate, and usable ingress and egress to a property or use, as required by this title.

"Temporary sign" means a sign or balloons intended for use which shall not be displayed for more than fourteen consecutive days and twice in a calendar year, which shall include, but is not limited to, portable signs, banners, A-boards and pennants.

(Ord. 415 (2008) § 79, 2008: Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.715 Temporary structure.

"Temporary structure" means a structure which does not have or is not required by the Uniform Building Code to have a permanent attachment to the ground. Temporary structures are subject to building permits.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.720 Temporary use.

"Temporary use" means a use which may occur on a lot on a seasonal basis or for a prescribed period of time which usually would not exceed one year's duration.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.725 Tract.

"Tract" means land reserved for specified uses including, but not limited to, reserve development tracts, recreation, open space, critical areas, stormwater facilities, utilities and access tracts. Tracts are not considered lots.

(Ord. 415 (2008) § 80, 2008)

17.110.728 Urban level of sanitary sewer service.

"Urban level of sanitary sewer service" means those forms of wastewater service provision within urban growth areas that serve urban levels of development, including, but not limited to, connections to public sewer systems, membrane biofiltration reactor systems, large on-site septic systems (LOSS), community sewage disposal systems, and existing properly functioning on-site septic systems.

(Ord. 495 (2012) § 9, 2012: Ord. 493 (2012) § 4, 2012)

17.110.730 Use.

"Use" means the nature of occupancy, type of activity or character and form of improvements to which land is devoted.

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.735 (Repealed)*

* **Editor's Note:** Former Section 17.110.735, "Use separation buffer," was repealed by § 81 of Ord. 415 (2008). Section 5 (part) of Ord. 367 (2006) and § 4 (part) of Ord. 216 (1998) were formerly codified in this section.

17.110.740 Veterinary clinic.

"Veterinary clinic" means the same as "animal hospital."

(Ord. 367 (2006) § 5 (part), 2006: Ord. 216 (1998) § 4 (part), 1998)

17.110.745 Water-dependent use.

"Water-dependent use" means a use or portion of a use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger

Chapter 17.200
ESTABLISHMENT OF ZONES AND MAPS

Sections:

17.200.010 Classification of zones.

17.200.020 Original zoning maps.

17.200.030 Revised maps.

17.200.040 Interpretations of zone boundaries.

17.200.010 Classification of zones.

For the purposes of this title, the county is divided into zones classified as follows:

Comprehensive Plan Land Use Designation	Zone Classification	Map Symbol	Density
Forest Resource Lands	Forest Resource Lands	FRL	1 dwelling unit / 40 acres
Rural Wooded	Rural Wooded	RW	1 dwelling unit / 20 acres
Rural Protection	Rural Protection	RP	1 dwelling unit / 10 acres
Rural Residential	Rural Residential	RR	1 dwelling unit / 5 acres
Urban Reserve	Urban Reserve	URS	1 dwelling unit / 10 acres
Urban Low-Density Residential	Urban Restricted	UR	1 – 5 dwelling units / acre
	Illahee Greenbelt Zone	IGZ	1 – 4 dwelling units / acre
	Urban Low Residential	UL	5 – 9 dwelling units / acre
	Senior Living Homestead Zone	SLH	5 – 9 dwelling units / acre
	Urban Cluster Residential	UCR	5 – 9 dwelling units / acre
Urban Medium/High- Density Residential	Urban Medium Residential	UM	10 – 18 dwelling units / acre
	Urban High Residential	UH	19 – 30 dwelling units / acre
Urban Low Intensity Commercial, Mixed Use and Rural Commercial ¹	Urban Village Center	UVC	Up to 18 dwelling units / acre
	Neighborhood Commercial	NC	10 – 30 dwelling units / acre
Urban High Intensity Commercial, Mixed Use and Rural Commercial ¹	Urban Town Center	UTC	Reserved
	Highway/Tourist Commercial	HTC	10 – 30 dwelling units / acre
	Regional Commercial	RC	10 – 30 dwelling units / acre
	Mixed Use	MU	10 – 30 dwelling units / acre
Urban and Rural	Business Park	BP	Not applicable
	Industrial	IND	Not applicable

Industrial ²	Business Center	BC	Not applicable
	Airport	A	Not applicable
Public Facilities	Parks	P	Not applicable
Mineral Resource	Mineral Resource Overlay	MR	Not applicable
Limited Area of More Intensive Rural Development (LAMIRD)	Manchester Village Commercial	MVC	0 – 5 dwelling units / acre
	Manchester Village Low Residential	MVLR	2 dwelling units / acre
	Manchester Village Residential	MVR	4 dwelling units / acre
LAMIRD	Port Gamble Rural Historic Town Commercial	RHTC	2.5 dwelling units / acre
	Port Gamble Rural Historic Town Residential	RHTR	2.5 dwelling units / acre
	Port Gamble Rural Historic Waterfront	RHTW	2.5 dwelling units / acre
LAMIRD	Suquamish Village Commercial	SVC	Not applicable
	Suquamish Village Low Residential	SVLR	2 dwelling units / acre
	Suquamish Village Residential	SVR	2 dwelling units / acre
LAMIRD	Keyport Village Residential	KVR	5 dwelling units / acre
	Keyport Village Low Residential	KVLR	2 dwelling units / acre
	Keyport Village Commercial	KVC	5 dwelling units / acre

¹ Includes commercially zoned properties located outside of the urban growth areas.

² Includes Industrial and Business Park zoned lands located outside of urban growth areas.

(Ord. 495 (2012) § 10, 2012; Ord. 493 (2012) § 4, 2012; Ord. 420 (2008) § 8 (part), 2008; Ord. 415 (2008) § 83, 2008; Ord. 384 (2007) § 3, 2007; Ord. 367 (2006) § 6, 2006; Ord. 311 (2003) [Attachment 7 (part)], 2003; Ord. 216 (1998) § 4 (part), 1998)

17.200.020 Original zoning maps.

The designations, locations, and boundaries of the zones set forth in this section shall be shown on the zoning map of Kitsap County, Washington. Said maps and all notations, references, data, and other information shown thereon shall be and are hereby adopted and made a part of this title. The signed copies of the zoning maps containing the zones designated at the time of the adoption of this title shall be maintained without change. Any land or property not specifically identified with a zone designation shall be considered to be zoned as the most restrictive zone classification designated on adjacent and/or abutted properties, until such time as it is determined otherwise by a rezoning.

**Chapter 17.381
ALLOWED USES**

Sections:

17.381.010 Categories of uses established.

17.381.020 Establishment of zoning use tables.

17.381.030 Interpretation of tables.

17.381.040 Zoning use tables.

17.381.050 Footnotes for zoning use tables.

17.381.060 Provisions applying to special uses.

17.381.010 Categories of uses established.

This chapter establishes permitted, conditional, and prohibited uses, by zone, for all properties within Kitsap County. All uses in a given zone are one of four types:

- A. Permitted Use. Land uses allowed outright within a zone and subject to provisions within Kitsap County Code.
- B. Administrative Conditional Use. Land uses which may be permitted within a zoning designation following review by the director to establish conditions mitigating impacts of the use and to ensure compatibility with other uses in the designation.
- C. Hearing Examiner Conditional Use. Land uses with special characteristics that may not generally be appropriate within a zoning designation, but may be permitted subject to review by the hearing examiner to establish conditions to protect public health, safety and welfare.
- D. Prohibited Use. Land uses specifically enumerated as prohibited within a zone.

(Ord. 415 (2008) § 140, 2008; Ord. 367 (2006) § 105 (part), 2006)

17.381.020 Establishment of zoning use tables.

The tables in Section 17.381.040 establish allowed uses in the various zoning designations and whether the use is allowed as "Permitted," "Administrative Conditional Use," or "Hearing Examiner Conditional Use." Uses with approval processes that will be determined at a future date are identified as "Reserved." The zone is located at the top of the table and the specific use is located on the far-left of the vertical column of these tables.

(Ord. 367 (2006) § 105 (part), 2006)

17.381.030 Interpretation of tables.

A. Legend. The following letters have the following meanings when they appear in the box at the intersection of the column and the row:

P	Permitted Use
ACUP	Administrative Conditional Use Permit
C	Hearing Examiner Conditional Use Permit
PBD	Performance Based Development

X	Prohibited Use
R	Reserved

B. Additional Use-Related Conditions. The small numbers (subscript) in a cell indicate additional requirements or detailed information for uses in specific zones. Those additional requirements can be found in the table footnotes in Section 17.381.050. All applicable requirements shall govern a use whether specifically identified in this chapter or not.

C. Unclassified Uses. Except as provided in Section 17.100.040, Allowed uses, if a use is not listed in the use column, the use is prohibited in that designation.

(Ord. 415 (2008) § 141, 2008; Ord. 367 (2006) § 105 (part), 2006)

17.381.040 Zoning use tables.

There are five separate tables addressing the following general land use categories and zones:

A. Urban Residential Zones.

1. Urban Restricted (UR).
2. Urban Low Residential (UL).
3. Senior Living Homestead (SLH).
4. Urban Cluster Residential (UCR).
5. Urban Medium Residential (UM).
6. Urban High Residential (UH).
7. Illahee Greenbelt Zone (IGZ).

B. Commercial and Mixed Use Zones.

1. Neighborhood Commercial (NC).
2. Urban Village Center (UVC).
3. Urban Town Center (UTC).
4. Highway Tourist Commercial (HTC).
5. Regional Commercial (RC).
6. Mixed Use (MU).
7. Low Intensity Commercial (LIC).

C. Airport and Industrial Zones.

1. Airport (A).
2. Business Park (BP).
3. Business Center (BC).
4. Industrial (IND).

D. Limited Areas of More Intensive Rural Development (LAMIRD).

1. Manchester Village Commercial (MVC).
 2. Manchester Village Low Residential (MVLRL).
 3. Manchester Village Residential (MVR).
 4. Port Gamble Rural Historic Town Commercial (RHTC).
 5. Port Gamble Rural Historic Town Residential (RHTR).
 6. Port Gamble Rural Historic Town Waterfront (RHTW).
 7. Suquamish Village Commercial (SVC).
 8. Suquamish Village Low Residential (SVLRL).
 9. Suquamish Village Residential (SVR).
- E. Parks, Rural and Resource Zones.
1. Parks (P).
 2. Forest Resource Lands (FRL).
 3. Mineral Resource (MR).
 4. Rural Protection (RP).
 5. Rural Residential (RR).
 6. Rural Wooded (RW).
 7. Urban Reserve (URS).

Table 17.381.040(A) Urban Residential Zones.

Use	Urban Low-Density Residential					Urban Medium/High-Density Residential	
	UCR (48)	IGZ (60)	UR (19)	UL (19)(48)	SLH (48)	UM (30)(47)(48)	UH (19)(47)(48)
RESIDENTIAL USES							
Accessory dwelling units (1)	P	P	P	P	P	P	X
Accessory living quarters (1)	P	P	P	P	P	P	X
Accessory use or structure (1) (17) (18) (51)	P	P	P	P	P	P	P
Adult family home	P (41)	X	ACUP P (41)	ACUP P (41)	P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast	P	ACUP C	ACUP C	ACUP C	ACUP	ACUP C	X

house		U (34)	U (34)	U (34)	(77)	U (34)	^
Caretaker's dwelling	X	X	X	X	X	ACUP	X
Convalescent home or congregate care facility	ACUP	X	X	C	ACUP (77)	C	ACUP
Cottage housing developments	P	ACUP	ACUP	ACUP	P (77)	ACUP	X
Dwelling, duplex	P	P	P (3)	P (3)	P (77)	P	X
Dwelling, existing	P	P	P	P	P (77)	P	P
Dwelling, multi-family	ACUP	C	C X (80)	C	P (77)	P	P
Dwelling, single-family attached	P	P	P	P	P (77)	P	ACUP
Dwelling, single-family detached	P	P	P	P	P (77)	P	ACUP
Guest house (1)	P	P	P	P	ACUP	P	X
Home business (1) (52)	P	P	P	P	X	ACUP	ACUP
Hotel/Motel	X	X	X	X	X	X	ACUP
Manufactured homes	P (43)	P (43)	P (43)	P (43)	P (43) (77)	P (43)	X (43)
Mixed use development (44)	X	X	X	X	ACUP (77) (78)	X	ACUP
Mobile homes	C (43)	C (24) (43)	C (24) (43)	C (24) (43)	X	C (24) (43)	X (43)
RESIDENTIAL USES (continued)							
Residential care facility	P	ACUP	ACUP	ACUP	ACUP (77)	P	P
Senior living development	X	X	X	X	PBD	X	X
COMMERCIAL/BUSINESS USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Adult entertainment	X	X	X	X	X	X	X

(1)	^	^	^	^	^	^	^
Ambulance service	X	X	X	X	ACUP (78)	X	X
Auction house	X	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X	X
Automobile rentals	X	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X	X
Automobile service station (6)	X	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X	X
Clinic, medical	X	X	X	X	ACUP (78)	X	ACUP (37)
Conference center	X	X	X	P	X	X	X
Custom art and craft stores	X	X	X	X	ACUP (78)	X	X
Day-care center (14)	C	C	C	C	X	ACUP	ACUP (37)
Day-care center, family (14)	P	C	P	P	X	ACUP	ACUP (37)
Drinking establishments	X	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	X	P (37)
Equipment rentals	X	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	ACUP (78)	X	X
General office and management services – less	C (28)	X	X	X	ACUP (78)	X	ACUP (37)

than 4,000 s.f.							
COMMERCIAL/BUSINESS USES (continued)							
General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	X	ACUP (37)
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	X	ACUP (37)
General retail merchandise stores – less than 4,000 s.f.	C (28)	X	X	X	ACUP (78)	X	ACUP (37)
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	ACUP (78)	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X		X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X
Kennels or pet day-cares	X	X	X	X	X	X	X
Kennels, hobby	P	P	P X (80)	P	P	P	X
Laundromats and laundry services	C (28)	X	X	X	ACUP (78)	X	ACUP (37)
Lumber and bulky building material sales	X	X	X	X	X	X	X
Mobile home sales	X	X	X	X	X	X	X
Nursery, retail	X	X	X	X	X	X	X
Nursery, wholesale	X	X	X	X	X	X	X
Off-street private parking facilities	X	X	X	X	X	X	X
Personal services – skin care, massage, manicures,	C	X	X	X	ACUP (78)	X	ACUP (37)

hairdresser/barber							
Pet shop – retail and grooming	X	X	X	X	X	X	ACUP (37)
Research laboratory	X	X	X	X	X	X	X
Restaurants	C (28)	X	X	X	C (78)	X	ACUP (37)
Restaurants, high-turnover	X	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X	X
Temporary offices and model homes (27)	P	P	P	P	P (78)	ACUP	ACUP (37)
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X	X
Tourism terminals, including seaplane and tour-boat terminals	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)							
Transportation terminals	X	X	X	X	X	X	X
Veterinary clinics/Animal hospitals	X	X	X	X	X	X	C (9) (37)
RECREATIONAL/CULTURAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Amusement centers	X	X	X	X	X	X	X
Carnival or circus	X	X	X	X	X	X	X
Club, civic or social (12)	ACUP	C (12)	C (12)	C	ACUP (78)	ACUP	ACUP
Golf courses	ACUP	C	C X (80)	C	X	C	ACUP
Marinas	ACUP	C	C X (80)	C	X	C	C
Movie/Performance theaters, indoor	X	X	X	X	X	X	X

Movie/Performance theaters, outdoor	X	X	X	X	X	X	ACUP
Museum, galleries, aquarium, historic or cultural exhibits	X	X	X	X	X	X	ACUP
Parks and open space	P	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X	X
Recreational facilities, private	ACUP	C	C	C	ACUP (78)	C	ACUP
Recreational facilities, public	P	P	P	P	ACUP (78)	P	ACUP
Recreational vehicle camping parks	X	C	C	C	ACUP (78)	X	X
Zoo	X	X	X	X	X	X	X
INSTITUTIONAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Government/Public structures	ACUP	ACUP	ACUP	ACUP	ACUP (78)	ACUP	ACUP
Hospital	X	X	X	X	X	X	C
Places of worship (12)	C	C	C	C	X	C	ACUP
INSTITUTIONAL USES continued)							
Private or public schools (20)	C	C	C	C	X	C	C
Public facilities, transportation and parking facilities, and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	C	C	C	ACUP	C	ACUP
INDUSTRIAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P

Air pilot training schools	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	C	C	X	C	C
Cold storage facilities	X	X	X	X	X	X	X
Contractor's storage yard	X	X	X	X	X	X	X
Food production, brewery or distillery	X	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X	X
Helicopter pads	X	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X	X
Manufacturing and fabrication, medium	X	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X
Recycling centers	X	X	X	X	X	X	X
Rock crushing	X	X	X	X	X	X	X
Slaughterhouse or animal processing	X	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X	X
Storage, self-service	C (40)	C (40)	C (40)	C (40)	C (40) (78)	C (40)	C
INDUSTRIAL USES (continued)							
Storage, vehicle and equipment (1)	X	X	X	X	C (78)	X	X
Top soil production							

and/or stump grinding	X	X	X	X	X	X	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X
RESOURCE LAND USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Aggregate extractions sites	X	X	X	X	X	X	X
Agricultural uses (15)	X	P	P X (80)	P	P	P	P
Aquaculture practices	C	C	C	C	C	C	C
Forestry	X	P	P X (80)	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	X	P (2)	P (2)	P (2)	P (2)	P (2)	P (2)

17.381.040(B) Commercial and Mixed Use Zones.

	Low Intensity Commercial/Mixed Use			High-Intensity Commercial/Mixed Use				Rural
Use	(NC) (19) (30) (48) (57)	UVC (30) (48) (57)	LIC (48) (57)	UTC (48) (57)	HTC (19) (29) (30) (48) (57)	RC (19) (48) (57) (88)	MU (19) (44) (45) (48) (57)	RCO (12) (64)
RESIDENTIAL USES								
Accessory dwelling units (1)	X	X	X	R	X	X	X	X
Accessory living quarters (1)	X	X	X	R	X	X	X	X
Accessory use or structure (1) (17) (18) (51)	P	P	P	R	P	P (84)	P	P
Adult family home	X	ACUP P (41)	ACUP P (41) (79)	R	ACUP P (41)	ACUP P (41) (84)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	ACUP C (34)	ACUP C (34)	ACUP (79)	R	X	X	X	ACUP C (34)
Caretaker's dwelling	ACUP	ACUP	ACUP	R	ACUP	ACUP (84)	ACUP	P
Convalescent home or congregate care facility	C	ACUP	ACUP X (79)	R	ACUP	ACUP (84)	ACUP	X
Cottage housing developments	X	ACUP	X	R	X	X	ACUP	X
Dwelling, duplex	X	ACUP	X	R	X	X	X	X
Dwelling, existing	P	P	P	R	P	P	P	P
Dwelling, multi-family	X	ACUP	P X (79)	R	ACUP	ACUP C (85)	ACUP P (81)	X
Dwelling, single-family attached	X	P	P X (79)	R	ACUP	ACUP (84)	ACUP P (81)	X
Dwelling, single-family detached	X	P	X	R	X	X	X	X
Guest house (1)	X	X	X	R	X	X	X	X

Home business (1) (53)	ACUP	P	X	R	X	X	ACUP	ACUP
Hotel/Motel	C	ACUP	ACUP X (79)	R	P	P (84)	ACUP	X
Manufactured homes	X	X (43)	ACUP X (79)	R	X	X	X	X
Mixed use development (44)	ACUP	ACUP	P X (79)	R	ACUP	ACUP (86)	ACUP P (81)	X
RESIDENTIAL USES (continued)								
Mobile homes	X	X (43)	X	R	X	X	X	X
Residential care facility	X	ACUP	ACUP X (79)	R	ACUP	ACUP (84)	ACUP	X
COMMERCIAL/BUSINESS USES								
Accessory use or structure (1) (17) (51)	P	P	P	R	P	P	P	P
Adult entertainment (1)	X	X	X	R	C	C (84)	X	X
Ambulance service	C	C	P	R	P	P (84)	ACUP	X
Auction house (55)	X	ACUP	P	R	P	P (84)	X	C
Auto parts and accessory stores (65)	P	X	P (83)	R	P	P (84)	ACUP	C
Automobile rentals	P (56)	P (56)	P (83)	R	P	P (61) (84)	ACUP	X
Automobile repair and car washes (65)	ACUP (54)	X	P (83)	R	P	P (84)	ACUP	C
Automobile service station (6)	ACUP	X	P (79) (83)	R	P	P (61) (84)	X C (82)	C
Automobile, recreational vehicle or boat sales	X	X	P (83)	R	ACUP	ACUP (84)	X	X
Boat/marine supply stores	X	X	P (83)	R	P	P (84)	ACUP	C
Brew pubs	ACUP	ACUP	P	R	P	P C (85)	ACUP	X

						(87)		
Clinic, medical	ACUP	ACUP	P	R	P	P (87)	ACUP	X
Conference center	X	P	P	R	P	P C (85)	ACUP	X
Custom art and craft stores	P (54)	P (54)	P	R	P	P C (85) (87)	ACUP	C
COMMERCIAL/BUSINESS USES (continued)								
Day-care center (14)	P (54)	P (54)	P X (79)	R	P	P C (85)	ACUP	ACUP
Day-care center, family (14)	ACUP (54)	ACUP (54)	P X (79)	R	P	P (61) (84)	P	X
Drinking establishments	C	ACUP	P	R	C	C (87)	C	C
Engineering and construction offices	P (54)	P (54)	P	R	P	P (84)	ACUP	ACUP
Espresso stands (58) (72)	P	X	P	R	P	P (61) (84)	P	ACUP
Equipment rentals	X	ACUP	X	R	P	P (61) (84)	ACUP	ACUP
Farm and garden equipment and sales	X	X	P	R	P	P (61) (84)	ACUP	ACUP
Financial, banking, mortgage and title institutions	P (54)	P (54)	P	R	P	P C (85) (87)	ACUP	X
General office and management services – less than 4,000 s.f.	P	P	P	R	P	P	ACUP	ACUP
General office and management services – 4,000 to 9,999 s.f.	ACUP	ACUP	P	R	P	P (84)	ACUP	C
General office and management services – 10,000 s.f.	X	ACUP	P	R	P	P (84)	ACUP	X

or greater								
General retail merchandise stores – less than 4,000 s.f.	P	P	P	R	P	P	ACUP	ACUP
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	ACUP	P	R	P	P (84)	ACUP	C
General retail merchandise stores – 10,000 to 24,999 s.f.	C	C	P	R	P	P (84)	ACUP	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	ACUP	R	ACUP (62)	ACUP (62) (84)	X	X
Kennels or pet day-cares	C	X	C	R	C	C (61) (84)	C	C
Kennels, hobby	P	P	X	R	X	X	P	X
Laundromats and laundry services	P (54)	P (54)	P	R	P	P (84)	ACUP	X
COMMERCIAL/BUSINESS USES (continued)								
Lumber and bulky building material sales	X	X	ACUP (42)	R	ACUP (42)	ACUP (42) (61) (84)	X	C
Mobile home sales	X	X	X	R	ACUP	ACUP (61) (84)	X	X
Nursery, retail	ACUP	ACUP	P	R	P	P (84)	ACUP	ACUP
Nursery, wholesale	ACUP	ACUP	P	R	P	P (61) (84)	ACUP	P
Off-street private parking facilities	ACUP	ACUP	X	R	P	P C (85)	ACUP	X
Personal services – skin care, massage, manicures, hairdresser/barber (66)	P (54)	P (54)	P	R	P	P (87)	ACUP	ACUP (54)
Pet shop – retail and grooming	ACUP	ACUP	P	R	P	P (84)	ACUP	ACUP (54)
Research laboratory	X	X	X	R	X	X	X	X
	P	P				P	ACUP	

Restaurants	(54)	(54)	P	R	P	ACUP (85)	P (81)	C
Restaurants, high-turnover	C	ACUP	P	R	P	P (63) (84)	ACUP P (81)	X
Recreation vehicle rentals	X	X	X	R	ACUP	ACUP (61) (84)	X	X
Temporary offices and model homes (27)	X	X	X	R	X	X	X	X
Tourism facilities, including outfitter and guide facilities	X	P	P	R	P	P	X	ACUP
Tourism facilities, including seaplane and tour-boat terminals	X	X	X	R	ACUP	ACUP (84)	X	C
Transportation terminals	C	C	C	R	ACUP	ACUP C (85)	ACUP	X
Veterinary clinics/Animal hospitals	ACUP	ACUP	P	R	P	P (84)	C	ACUP
RECREATIONAL/CULTURAL USES								
Accessory use or structure (1) (17) (51)	P	P	P	R	P	P	P	P
Amusement centers	C	C (11)	ACUP (11) X (79)	R	ACUP (11)	ACUP (11)	ACUP (11)	X
Carnival or circus	C	ACUP (11)	ACUP (11) X (79)	R	ACUP (11)	ACUP (11) (61) (84)	ACUP (11)	X
Club, civic or social	ACUP	ACUP	P	R	P	P ACUP (85)	ACUP	C
Golf courses	ACUP	ACUP	X	X	ACUP	ACUP (61) (84)	ACUP X (80)	X
Marinas	ACUP	C	X	X	ACUP	ACUP (61) (84)	C	C
Movie/Performance						P		

Movie/Performance theaters, indoor	ACUP	P	P	R	P	ACUP (85)	ACUP	X
Movie/Performance theaters, outdoor	X	ACUP	C	R	C	ACUP	C	C
Museum, galleries, aquarium, historic or cultural exhibits (67)	ACUP	P	P	R	P	P C (85)	ACUP	C
Parks and open space	P	P	P	P	P	P	P	P
Race track, major	X	X	X	X	C	C (61) (84)	X	X
Race track, minor	X	X	X	X	X	X	X	X
Recreational facilities, private	ACUP	ACUP	ACUP	R	ACUP	ACUP	ACUP	C
Recreational facilities, public	ACUP	ACUP	P	R	ACUP	ACUP	ACUP	ACUP
Recreational vehicle camping parks	C	X	X	R	C	X	X	X
Zoo	X	X	C	R	C	C (61) (84)	X	X
INSTITUTIONAL USES								
Accessory use or structure (1) (17) (51)	P	P	P	R	P	P	P	P
Government/Public structures	ACUP	ACUP	ACUP	R	ACUP	ACUP	ACUP	ACUP
Hospital	X	C	ACUP	R	ACUP	ACUP (84)	C	X
Places of worship (12)	C	C	ACUP	R	ACUP	ACUP (84)	C	C
Private or public schools (20)	C	C	ACUP	R	ACUP	ACUP	C	C
Public facilities, transportation and parking facilities, electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	ACUP	ACUP	R	ACUP	ACUP	ACUP	C
INDUSTRIAL USES								
Accessory use or	P	P	P	R	P	P	P	P

structure (1) (17) (51)	'	'	'	'	'	(84)	'	'
Air pilot training schools	X	P	X	R	P	P (84)	X	X
Assembly and packaging operations	X	C	X	R	C	C (61) (84)	C X (80)	X
Boat yard	X	X	X	R	ACUP	ACUP (61) (84)	X	X
Cemeteries, mortuaries, and crematoriums (10)	C	C	X	R	ACUP	ACUP (61) (84)	X	C
Cold storage facilities (69)	X	X	X	R	X	X	X	C
Contractor's storage yard (21)	X	X	X	R	X	X	X	X
Food production, brewery or distillery	X	X	X	R	C	C (61) (84)	C X (80)	C
Fuel distributors	X	X	X	R	C	C (61) (84)	X	X
Helicopter pads (13)	X	C	C	R	C	C (84)	C	X
Manufacturing and fabrication, light	X	C	X	R	C	C (61) (84)	X	X
INDUSTRIAL USES (continued)								
Manufacturing and fabrication, medium	X	X	X	R	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	R	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	R	X	X	X	X
Recycling centers	X	X	X	R	X	X	X	C
Rock crushing	X	X	X	R	X	X	X	X
Slaughterhouse or animal processing	X	X	X	R	X	X	X	C (70)
Storage, hazardous materials	X	X	X	R	X	X	X	C (75)
Storage, indoor	X	X	X	R	C	C (61) (84)	X	C (75)

Storage, outdoor	X	X	X	R	X	X	X	C (75)
Storage, self-service	C	C	ACUP X (79)	R	ACUP	ACUP (61) (84)	ACUP (40)	C (75)
Storage, vehicle and equipment (1)	X	X	X	R	ACUP	X	X	C
Top soil production, stump grinding	X	X	X	R	X	X	X	C
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	R	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	R	X	X	X	X
Warehousing and distribution (68)	X	X	X	R	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	R	X	X	X	X
RESOURCE LAND USES								
Accessory use or structure (1) (17) (51)	P	P	P	R	P	P (84)	P	P
Aggregate extraction sites	X	X	X	R	X	X	X	C
Agricultural uses (15)	P	X	P X (79)	R	P	P (84)	P	P
Aquaculture practices	C	C	C	R	C	C (84)	C	C
Forestry	P	X	P X (79)	R	P	P (84)	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	R	X	X	X	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of	P (2)	X	P (2)	R	P (2)	P (2) (84)	P (2)	P (2)

agricultural products grown on site (27)								
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Table 17.381.040(C) Airport and Industrial Zones.

Use	Airport	Industrial			
	A	BC (31) (42)	BP	IND (32) (42)	RI (12) (42)
RESIDENTIAL USES					
Accessory dwelling units	X	X	X	X	X
Accessory living quarters	X	X	X	X	X
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Adult family home	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	X	X	X	X	X
Caretaker's dwelling	ACUP	P	P	P	P
Convalescent home or congregate care facility	X	X	X	X	X
Cottage housing developments	X	X	X	X	X
Dwelling, duplex	X	X	X	X	X
Dwelling, existing	P	P	P	P	P
Dwelling, multi-family	X	X	X	X	X
Dwelling, single-family attached	X	X	X	X	X
Dwelling, single-family detached	X	X	X	X	X
Guest house	X	X	X	X	X
Home business	X	X	X	X	X
Hotel/Motel	X	X	X	X	X
Manufactured homes	X	X	X	X	X
Mixed use development	X	X	X	X	X
Mobile homes	X	X	X	X	X
Residential care facility	X	X	X	X	X
COMMERCIAL/BUSINESS USES					
Accessory use or structure (1) (17) (51)	P	P	P	P	P
Adult entertainment (1)	X	C	X	C	X
Ambulance service	X	P	ACUP	ACUP	X

Auction house	X	ACUP	ACUP	P	C
Auto parts and accessory stores	X	X	X	X	X
Automobile rentals	X	X	X	X	X
Automobile repair and car washes	X	P (61)	ACUP	P (33)	C
Automobile service station (6)	X	C (33)	C (33)	P (33)	C
COMMERCIAL/BUSINESS USES (continued)					
Automobile, recreational vehicle or boat sales	X	ACUP (35)	X	ACUP (35)	X
Boat/marine supply stores	X	X	X	X	X
Brew pubs	X	ACUP (33)	ACUP (33)	ACUP	X
Clinic, medical	X	P	ACUP	C	X
Conference center	X	X	X	X	X
Custom art and craft stores	X	X	X	X	X
Day-care center (14)	X	P (33)	P (33)	P (33)	X
Day-care center, family (14)	X	P (33) (61)	P (33)	X	X
Drinking establishments	C	P (33)	C (33)	X	X
Engineering and construction offices	X	P	P (33)	P (33)	ACUP (72)
Espresso stands (58)	X	P (33) (61)	P (33)	P (33)	ACUP
Equipment rentals	X	P	P	P	ACUP (73)
Farm and garden equipment and sales	X	X	X	X	C
Financial, banking, mortgage and title institutions	X	P	P (33)	ACUP (33)	X
General office and management services – less than 4,000 s.f.	X	P	P	P (33)	X
General office and management services – 4,000 to 9,999 s.f.	X	P	P	X	X
General office and management services –	X	P	P	X	X

10,000 s.f. or greater					
General retail merchandise stores – less than 4,000 s.f.	X	P (33)	P (33)	ACUP (33)	X
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X
Kennels or pet day-cares	X	P	ACUP	ACUP	C
Kennels, hobby	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)					
Laundromats and laundry services	X	P (33)	P	ACUP	X
Lumber and bulky building material sales	X	P (61)	X	P	ACUP
Mobile home sales	X	X	X	X	X
Nursery, retail	X	X	X	X	X
Nursery, wholesale	X	X	X	X	P
Off-street private parking facilities	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X	X
Pet shop – retail and grooming	X	X	X	X	X
Research laboratory	X	P	P	P	C
Restaurants	ACUP	P (33)	C (33)	ACUP (33)	X
Restaurants, high-turnover (33)	P (59)	P (59)	P (59)	P (59)	X
Recreational vehicle rentals	X	ACUP (61)	ACUP	ACUP	X
Temporary offices and model homes (27)	X	X	X	X	X
Tourism facilities, including outfitter and guide facilities	P	P	P	ACUP	X

Tourism facilities, including seaplane and tour boat terminals	ACUP	X	X	X	X
Transportation terminals	ACUP	P	X	ACUP	X
Veterinary clinics/Animal hospitals	X	P	ACUP	ACUP	X
RECREATIONAL/CULTURAL USES					
Accessory use or structure (1) (17)	P	P	P	P	P
Amusement centers	X	X	X	C (11)	X
Carnival or Circus	X	X	X	ACUP (11)	X
Club, civic or social (12)	ACUP	ACUP	X	ACUP	X
Golf courses	X	X	X	X	X
Marinas	X	X	X	C	C
Movie/Performance theaters, indoor	X	X	X	X	X
RECREATIONAL/CULTURAL USES (continued)					
Movie/Performance theaters, outdoor	X	C	ACUP	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	P	ACUP	X	X
Parks and open space	P	P	P	P	P
Race track, major	X	C (61)	C	C	X
Race track, minor	X	X	X	C	X
Recreational facilities, private	X	P	C	C	X
Recreational facilities, public	C	P	C	C	X
Recreational vehicle camping parks	X	X	X	X	X
Zoo	X	X	X	X	X
INSTITUTIONAL USES					
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Government/Public structures	P	P	P	P	C
Hospital	X	C	C	C	X
Places of worship (12)	X	C	X	C	X

Private or public schools (20)	X	P	ACUP	ACUP	C
Public facilities and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	C	ACUP	ACUP	ACUP	C
INDUSTRIAL USES					
Accessory use or structure (1) (17) (51)	P	P	P	ACUP	P
Air pilot training schools	P	P	P	P	X
Assembly and packaging operations	ACUP	P	X	ACUP	C
Boat yard	X	P (61)	ACUP	ACUP	C
Cemeteries, mortuaries, and crematoriums (10)	X	ACUP (61)	X	ACUP	C
Cold storage facilities	X	X	ACUP	P	C
Contractor's storage yard (21)	X	P (61)	X	P	ACUP
Food production, brewery or distillery	X	ACUP	ACUP	C	C
INDUSTRIAL USES (continued)					
Fuel distributors	X	C (61)	X	C	C
Helicopter pads (13)	P	ACUP	X	ACUP	ACUP
Manufacturing and fabrication, light	ACUP	P	P	P	C
Manufacturing and fabrication, medium	ACUP	C (52) (61)	ACUP	P	C
Manufacturing and fabrication, heavy	X	X	X	ACUP	X
Manufacturing and fabrication, hazardous	X	X	X	C	X
Recycling centers	X	X	X	ACUP	C
Rock crushing	X	X	X	C	C
Slaughterhouse or animal processing	X	X	X	C	C (70)
Storage, hazardous materials	X	X	X	C	C (75)
Storage, indoor	C	P	P	P	ACUP

Storage, mobile	C	(61)			
Storage, outdoor	C	ACUP (61)	X	P	C
Storage, self-service	X	ACUP (61)	X	P	C
Storage, vehicle and equipment (1)	X	ACUP (61)	X	P	C (75)
Top soil production, stump grinding	X	X	X	ACUP	ACUP
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	P (61)	C	C	C
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	P	X	X	C	C (74)
Warehousing and distribution	ACUP	P (61)	P	P	ACUP
Wrecking yards and junk yards (1)	X	X	X	C	C
RESOURCE LAND USES					
Accessory use or structure (1) (17) (51)	P	P	ACUP	ACUP	P
Aggregate extractions sites	X	P	X	C	C
Agricultural uses (15)	X	P	P	P	P
Aquaculture practices	X	P	X	C	C
Forestry	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	C	C
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	P (2)	P (2)	P (2)	P (2)	X

Table 17.381.040(D) Limited Areas of More Intensive Rural Development (LAMIRD).

	TYPE 1 LAMIRDS				TYPE 3 LAMIRDS	
	KVC Keyport Rural	Manchester LAMIRD	Rural Historic LAMIRD	Suquamish LAMIRD	Rural	12 Trees

Use	Village Zoning						Employment						Employment Center	Employment Center
	KVC	KVLR (2 du/ acre)	KVR (5 du/ acre)	MVC (50)	MVLR	MVR	RHTC (25)	RHTR (25)	RHTW (25)	SVC	SVLR	SVR		
RESIDENTIAL USES														
Accessory dwelling units (1)	ACUP	P	P	X	C	C	C	C	X	C	ACUP	ACUP	X	X
Accessory living quarters (1)	ACUP	P	P	X	P	P	C	P	P	C	P	P	X	X
Accessory use or structure (1) (17) (18) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	X
Adult family home	ACUP	CUP	CUP	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)	X	X
Bed and breakfast house	ACUP (34)	P (34)	P (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)	X	X
Caretaker's dwelling	ACUP	X	X	X	X	X	P	X	P	X	X	X	P	P
Convalescent home or congregate care facility	ACUP	CUP	CUP	ACUP	X	X	ACUP	C	X	X	X	X	X	X
Cottage housing developments	CUP	ACUP	ACUP	X	X	X	X	C	C	X	C	C	X	X
Dwelling, duplex	CUP	ACUP (3)	ACUP (3)	X	P (3)	P (3)	P	P	X	X	C	C	X	X
Dwelling, existing	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Dwelling, multifamily	CUP	CUP	CUP	X	X	X	ACUP	ACUP	X	X	X	X	X	X
Dwelling, single-family attached	CUP (26)	P	P	P (26)	P	P	P	P	X	C	P	P	X	X
Dwelling, single-family detached	CUP (26)	P	P	P (26)	P	P	P	P	X	C	P	P	X	X
RESIDENTIAL USES (continued)														
Guest house (1)	X	X	X	X	P	P	P	P	P	C	P	P	X	X
Home business (1) (52)	ACUP	ACUP	ACUP	X	ACUP	ACUP	P	P	X	X	ACUP	ACUP	X	X
Hotel/motel	ACUP	X	X	C	X	X	ACUP	X	ACUP	X	X	X	X	X
Manufactured homes	CUP (43)	ACUP (43)	ACUP (43)	X	P (43)	P (43)	ACUP (43)	ACUP (43)	X	X	P (43)	P (43)	X	X
Mixed use	ACUP	X	X	ACUP	X	X	ACUP	X	PRD	ACUP	X	X	X	X

development (44)	ACUP	^	^	ACUP	^	^	ACUP	^	^	ACUP	^	^	^	^
Mobile homes	CUP (43)	CUP (43)	CUP (43)	X	X	X	X	X	X	X	X	X	X	X
Residential care facility	ACUP	ACUP	ACUP	X	X	X	X	X	X	C	X	X	X	X
COMMERCIAL/BUSINESS USES														
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	P
Adult entertainment (1)	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X	X	X	X	X	X	X	ACUP	ACUP
Auction house	X	X	X	X	X	X	X	X	X	X	X	X	P (76)	P – Indoor Only (76)
Auto parts and accessory stores	ACUP	X	X	ACUP	X	X	X	X	X	C	X	X	P	X
Automobile rentals	CUP	X	X	X	X	X	X	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)														
Automobile repair and car washes	ACUP	X	X	X	X	X	ACUP	X	X	C	X	X	ACUP (76)	X
Automobile service station (6)	X	X	X	X	X	X	ACUP	X	X	ACUP (36)	X	X	ACUP	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X	X	ACUP	X	X	X	X	X
Boat/marine supply stores	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C	X	X	P (76)	X
Brew pubs	ACUP	X	X	X	X	X	ACUP	X	ACUP	C	X	X	ACUP	X
Clinic, medical	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C	X	X	C	P
Conference center	X	X	X	X	X	X	ACUP	X	ACUP	X	X	X	X	X
Custom art and craft stores	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	P	X	X	P (76)	X
Day-care center (14)	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP	C	C	P	P
Day-care center, family (14)	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP	C	C	X	X
Drinking establishments	CUP	X	X	C	X	X	C	X	C	C	X	X	X	X
Engineering and construction offices	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C	X	X	P (76)	P (76)

Espresso stands (58)	ACUP	X	X	ACUP	X	X	ACUP	X	X	C	X	X	P	P
Equipment rentals	X	X	X	X	X	X	X	X	X	X	X	X	P	X
Farm and garden equipment and sales	CUP	X	X	X	X	X	X	X	X	C	X	X	P	X
COMMERCIAL/BUSINESS USES (continued)														
Financial, banking, mortgage and title institutions	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	C	X	X	P (76)	P (76)
General office and management services – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP	X	X	P	P
General office and management services – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD (38)	X	PBD (38)	ACUP	X	X	ACUP	P
General office and management services – 10,000 s.f. or greater	ACUP	X	X	ACUP	X	X	X	X	X	ACUP	X	X	C	P
General retail merchandise stores – less than 4,000 s.f.	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP	X	X	P	X
General retail merchandise stores – 4,000 to 9,999 s.f.	ACUP	X	X	ACUP	X	X	PBD	X	PBD	ACUP	X	X	ACUP	X
General retail merchandise stores – 10,000 to 15,000 s.f.	CUP	X	X	X	X	X	X	X	X	C	X	X	X	X
General retail merchandise stores – 15,001 to 24,999 s.f.	CUP	X	X	X	X	X	X	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Kennels or pet day-cares (1)	CUP	X	X	X	C	C	X	X	X	X	X	X	P	P
Kennels, hobby	CUP	CUP	CUP	X	P	P	X	P	X	X	P	P	X	X

COMMERCIAL/BUSINESS USES (continued)

Laundromats and laundry services	CUP	X	X	C	X	X	ACUP	X	ACUP	ACUP	X	X	X	X
Lumber and bulky building material sales	X	X	X	X	X	X	X	X	ACUP	ACUP	X	X	P	X
Mobile home sales	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Nursery, retail	ACUP	CUP	CUP	ACUP	C	C	ACUP	X	ACUP	ACUP	C	C	P	X
Nursery, wholesale	ACUP	CUP	CUP	ACUP	C	C	ACUP	X	ACUP	ACUP	C	C	P	X
Off-street private parking facilities	CUP	X	X	ACUP	X	X	ACUP	X	ACUP	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP	X	X	X	X
Pet shop – retail and grooming	ACUP	X	X	ACUP	X	X	ACUP	X	X	C	X	X	P (76)	X
Research laboratory	CUP	X	X	X	X	X	X	X	C	X	X	X	P	P
Restaurants	ACUP	X	X	ACUP	X	X	ACUP	X	ACUP	ACUP	X	X	P (76)	P (76)
Restaurants, high-turnover	CUP	X	X	C	X	X	C	X	C	C	X	X	P (76)	X
Recreational vehicle rental	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Temporary offices and model homes (27)	CUP	X	X	X	ACUP	ACUP	X	X	ACUP	X	X	X	ACUP (76)	ACUP (76)

COMMERCIAL/BUSINESS USES (continued)

Tourism facilities, including outfitter and guide facilities	CUP	X	X	X	X	X	X	X	C	C	X	X	ACUP (76)	P
Tourism facilities, including seaplane and tour boat terminals	CUP	X	X	X	X	X	X	X	C	C	X	X	X	X
Transportation terminals	X	X	X	X	X	X	X	X	C	X	X	X	ACUP	ACUP
Veterinary clinics/animal hospitals	ACUP	X	X	ACUP	X	X	ACUP	X	X	ACUP	C	C	ACUP	ACUP

RECREATIONAL/CULTURAL USES

Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	X
Amusement centers	CUP (11)	X	X	C (11)	X	X	X (11)	X	X	X (11)	X	X	X	X
Carnival or circus	CUP (11)	X	X	C (11)	X	X	X (11)	X	X	X (11)	X	X	X	X
Club, civic or social (12)	ACUP	X	X	ACUP	ACUP	ACUP	ACUP	C	ACUP	ACUP	C	C	X	X
Golf courses	CUP	X	X	X	C	C	ACUP	C	ACUP	ACUP	C	C	X	X
Marinas	ACUP	X	X	ACUP	X	X	X	X	PBD	ACUP	C	C	X	X
Movie/Performance theaters, indoor	CUP	X	X	C	X	X	ACUP	X	X	X	X	X	X	X
Movie/Performance theaters, outdoor	CUP	X	X	X	X	X	X	X	X	X	X	X	X	X
RECREATIONAL CULTURAL USES (continued)														
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	ACUP	X	X	ACUP	C	ACUP	ACUP	X	X	X	X
Parks and open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Race track, major	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Race track, minor	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Recreational facilities, private	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP	C	C	X	X
Recreational facilities, public	CUP	CUP	CUP	C	C	C	ACUP	C	ACUP	ACUP	C	C	X	X
Recreational vehicle camping parks	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Zoo	ACUP	X	X	X	X	X	X	X	X	X	X	X	X	X
INSTITUTIONAL USES														
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	X
Government/public structures	ACUP	CUP	CUP	ACUP	C	C	ACUP	C	ACUP	ACUP	C	C	C	P
Hospital	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Places of worship (12)	ACUP	CUP	CUP	ACUP	C	C	C	C	C	ACUP	C	C	X	X
Private or public schools (20)	ACUP	CUP	CUP	ACUP	C	C	ACUP	C	ACUP	ACUP	C	C	ACUP	P

Public facilities and electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	ACUP	CUP	CUP	ACUP	C	C	PBD	X	PBD	P	C	C	ACUP	ACUP
INDUSTRIAL USES														
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X	X	X	X	X	X	P	P
Assembly and packaging operations	X	X	X	X	X	X	PBD	X	PBD	X	X	X	ACUP	P
Boat yard	ACUP	X	X	X	X	X	ACUP	X	ACUP	X	X	X	P	P
Cemeteries, mortuaries, and crematoriums (10)	CUP	X	X	X	C	C	X	X	X	X	X	X	X	X
Cold storage facilities	X	X	X	X	X	X	X	X	X	X	X	X	P	P
Contractor's storage yard (21)	CUP	X	X	X	C	C	X	X	ACUP	X	X	X	P	X
Food production, brewery or distillery	X	X	X	X	X	X	C	X	C	X	X	X	P	P
Fuel distributors	X	X	X	X	X	X	X	X	X	X	X	X	P	X
Helicopter pads (13)	X	X	X	X	X	X	X	X	X	X	X	X	C	C
Manufacturing and fabrication, light	X	X	X	X	X	X	PBD	X	PBD	X	X	X	P	P
Manufacturing and fabrication, medium	X	X	X	X	X	X	X	X	PBD	X	X	X	ACUP	ACUP
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X	X	PBD	X	X	X	C	C
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X	X	PBD	X	X	X	C	C
INDUSTRIAL USES (continued)														
Recycling centers	X	X	X	X	X	X	X	X	C	X	X	X	ACUP	X
Rock crushing	X	X	X	X	X	X	X	X	X	X	X	X	C	X

Slaughterhouse or animal processing	X	X	X	X	X	X	X	X	X	X	X	X	ACUP	X
Storage, hazardous materials	X	X	X	X	X	X	X	X	X	X	X	X	C	P
Storage, indoor	X	X	X	X	X	X	X	X	ACUP	X	X	X	P	P
Storage, outdoor	X	X	X	X	X	X	X	X	ACUP	X	X	X	P	X
Storage, self-service	CUP	X	X	X	X	X	X	X	X	X	X	X	P	P
Storage, vehicle and equipment (1)	X	X (18)	X	X	X (18)	X (18)	X	X (18)	ACUP (18)	X	X (18)	X (18)	P	P – Indoor or Covered Only
Top soil production, stump grinding	X	X	X	X	X	X	X	X	ACUP	X	X	X	P	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X	X	C	X	X	X	C	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X	X	X	X	X	X	X	X
INDUSTRIAL USES (continued)														
Warehousing and distribution	X	X	X	X	X	X	X	X	X	X	X	X	P	P
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X	X	X	X	X	X	C	X
RESOURCE LAND USES														
Accessory use or structure (1) (17) (51)	ACUP	P	P	ACUP	P	P	P	P	P	P	P	P	P	X
Aggregate extractions sites	X	X	X	X	X	X	X	X	X	X	X	X	P	P
Agricultural uses (15)	X	P	P	X	P	P	P	P	P	P	P	P	P	X
Aquaculture practices	X	CUP	CUP	X	C	C	X	X	X	X	X	X	C	X
Forestry	X	X	X	X	P	P	P	P	P	P	P	P	P	X
Shellfish/fish														

hatcheries and processing facilities	CUP	X	X	X	X	X	X	X	PBD	X	X	X	C	X
Temporary stands not exceeding 200 square feet in area and exclusively for the sale of agricultural products grown on site (27)	ACUP	ACUP (2)	ACUP (2)	X	P (2)	P (2)	P (2)	P (2)	P (2)	P (2)	P (2)	P (2)	X	X

Table 17.381.040(E) Parks, Rural and Resource Zones.

Use	Parks	Resource		Rural			
	Parks	FRL	MR	URS	RP	RR	RW
RESIDENTIAL USES							
Accessory dwelling units (1)	X	X	X	C	C	C	C
Accessory living quarters (1)	X	X	X	P	P	P	P
Accessory use or structure (1) (17) (18) (51)	X	P	P	P	P	P	P
Adult family home	X	X	X	ACUP P (41)	ACUP P (41)	ACUP P (41)	ACUP P (41)
Bed and breakfast house	X	X	X	ACUP C (34)	ACUP C (34)	ACUP C (34)	ACUP C (34)
Caretaker's dwelling	P	X	X	X	X	X	X
Convalescent home or congregate care facility	X	X	X	X	X	X	X
Cottage housing developments	X	X	X	X	X	X	X
Dwelling, duplex	X	P (3)	X	P (3)	P (3)	P (3)	P (3)
Dwelling, existing	X	P	P	P	P	P	P
Dwelling, multi-family	X	X	X	X	X	X	X
Dwelling, single-family attached	X	C	X	C	C	C	X
Dwelling, single-family detached	X	C	X	P	P	P	P
Guest house (1)	X	X	X	P	P	P	P

Home business (1) (52)	X	C (23)	X	ACUP	ACUP	ACUP	ACUP
Hotel/Motel	X	X	X	X	X	X	X
Manufactured homes	X	C (43)	X	P (43)	P (43)	P (43)	X
Mixed use development (44)	X	X	X	X	X	X	X
Mobile homes	X	P (43)	P	P (43)	P (43)	P (43)	P
Residential care facility	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Adult entertainment (1)	X	X	X	X	X	X	X
Ambulance service	X	X	X	X	X	X	X
Auction house	X	X	X	X	X	X	X
Auto parts and accessory stores	X	X	X	X	X	X	X
Automobile rentals	X	X	X	X	X	X	X
Automobile repair and car washes	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)							
Automobile service station (6)	X	X	X	X	X	X	X
Automobile, recreational vehicle or boat sales	X	X	X	X	X	X	X
Boat/marine supply stores	X	X	X	X	X	X	X
Brew pubs	X	X	X	X	X	X	X
Clinic, medical	X	X	X	X	X	X	X
Conference center	ACUP	X	X	X	X	X	X
Custom art and craft stores	X	X	X	X	X	X	X
Day-care center (14)	ACUP (X) (79)	X	X	C	C	C	X
Day-care center, family (14)	X	X	X	ACUP	P	P	X
Drinking establishments	X	X	X	X	X	X	X
Engineering and construction offices	X	X	X	X	X	X	X
Espresso stands (58)	X	X	X	X	X	X	X

Equipment rentals	X	X	X	X	X	X	X
Farm and garden equipment and sales	X	X	X	X	X	X	X
Financial, banking, mortgage and title institutions	X	X	X	X	X	X	X
General office and management services – less than 4,000 s.f.	X	X	X	X	X	X	X
General office and management services – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General office and management services – 10,000 s.f. or greater	X	X	X	X	X	X	X
General retail merchandise stores – less than 4,000 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 4,000 to 9,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 10,000 to 24,999 s.f.	X	X	X	X	X	X	X
General retail merchandise stores – 25,000 s.f. or greater	X	X	X	X	X	X	X
Kennels or Pet day-cares	X	X	X	C (12)	C (12)	C (12)	X
Kennels, hobby	X	X	X	P	P	P	P
Laundromats and laundry services	X	X	X	X	X	X	X
Lumber and bulky building material sales	X	X	X	X	X	X	X
COMMERCIAL/BUSINESS USES (continued)							
Mobile home sales	X	X	X	X	X	X	X
Nursery, retail	X	X	X	C	C	C	X
Nursery, wholesale	X	X	X	P	P	P	P
Off-street private parking facilities	X	X	X	X	X	X	X
Personal services – skin care, massage, manicures, hairdresser/barber	X	X	X	X	X	X	X

Pet shop – retail and grooming	X	X	X	X	X	X	X
Research laboratory	X	X	X	X	X	X	X
Restaurants	X	X	X	X	X	X	X
Restaurants, high-turnover	X	X	X	X	X	X	X
Recreational vehicle rentals	X	X	X	X	X	X	X
Temporary offices and model homes (27)	X	X	X	X	ACUP	ACUP	X
Tourism facilities, including outfitter and guide facilities	X	X	X	X	X	X	X
Tourism facilities, including seaplane and tour-boat terminals	X	X	X	X	X	X	X
Transportation terminals	X	X	X	X	X	X	X
Veterinary clinics/Animal hospitals	X	X	X	C	C (8)	C (8)	X
RECREATIONAL/CULTURAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Amusement centers	ACUP	X	X	X	X	X	X
Carnival or Circus	ACUP	X	X	X	X	X	X
Club, civic or social	ACUP	X	C (12)	X	C (12)	C (12)	X
Golf courses	ACUP	X	X	C (12)	C (12)	C (12)	X
Marinas	ACUP	X	X	X	X	X	X
Movie/Performance theaters, indoor	X	X	X	X	X	X	X
Movie/Performance theaters, outdoor	C	X	X	X	X	X	X
Museum, galleries, aquarium, historic or cultural exhibits	ACUP	X	X	X	X	X	X
Parks and open space	P	P	P	P	P	P	P
Race track, major	C (12)	X	X	X	X	X	X
RECREATIONAL/CULTURAL USES (continued)							
Race track, minor	C (12)	C (12)	C (12)	X	X	X	C (12)

Recreational facilities, private	ACUP	X	X	C (12)	C (12)	C (12)	C
Recreational facilities, public	ACUP	X	X	ACUP	ACUP	ACUP	C
Recreational vehicle camping parks	ACUP	X	X	X	C (46)	C (46)	C (46)
Zoo	X	X	X	X	X	X	X
INSTITUTIONAL USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Government/Public structures	P	X	X	P	ACUP	ACUP	X
Hospital	X	X	X	X	X	X	X
Places of worship	X	X	X	C (12)	C (12)	C (12)	X
Private or public schools (20)	X	X	X	C	C	C	X
Public facilities, transportation and parking facilities, electric power and natural gas utility facilities, substations, ferry terminals, and commuter park-and-ride lots (16)	P	C (5)	C	C	C	C	C
INDUSTRIAL USES							
Accessory use or structure (1) (17) (51)	X	P	P	P	P	P	P
Air pilot training schools	X	X	X	X	X	X	X
Assembly and packaging operations	X	X	X	X	X	X	X
Boat yard	X	X	X	X	X	X	X
Cemeteries, mortuaries, and crematoriums (10)	X	X	X	C	C	C	C
Cold storage facilities	X	X	X	X	X	X	X
Contractor's storage yard (21)	X	X	ACUP	X	C (12)	C (12)	X
Food production, brewery or distillery	X	X	X	X	X	X	X
Fuel distributors	X	X	X	X	X	X	X
Helicopter pads (13)	X	X	X	X	X	X	X
Manufacturing and fabrication, light	X	X	X	X	X	X	X

Manufacturing and fabrication, medium	X	X	X	X	X	X	X
Manufacturing and fabrication, heavy	X	X	X	X	X	X	X
Manufacturing and fabrication, hazardous	X	X	X	X	X	X	X
INDUSTRIAL USES (continued)							
Recycling centers	X	X	X	X	X	X	X
Rock crushing	X	C (39)	C (39)	X	X	X	C (39)
Slaughterhouse or animal processing	X	X	X	X	X	X	X
Storage, hazardous materials	X	X	X	X	X	X	X
Storage, indoor	X	X	X	X	X	X	X
Storage, outdoor	X	X	X	X	X	X	X
Storage, self-service	X	X	X	X	X	X	X
Storage, vehicle and equipment (1)	X	X	X	X (18)	X (18)	X (18)	X
Top soil production, stump grinding	X	X	C	X	C (22)	C (22)	X
Transshipment facilities, including docks, wharves, marine rails, cranes, and barge facilities	X	X	X	X	X	X	X
Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc. (13)	X	X	X	X	X	X	X
Warehousing and distribution	X	X	X	X	X	X	X
Wrecking yards and junk yards (1)	X	X	X	X	X	X	X
RESOURCE LAND USES							
Accessory use or structure (1) (17) (51)	P	P	P	P	P	P	P
Aggregate extractions sites	X	P (4)	P	X	C	C	C
Agricultural uses (15)	P X (79)	X	P	P	P (7)	P (7)	P (7)
Aquaculture practices	P	X	X	C	C	C	C

Forestry	P X (79)	P	P	P	P	P	P
Shellfish/fish hatcheries and processing facilities	X	X	X	X	X	X	X

(Ord. 518 (2014) § 4 (Att. C), 2014; Ord. 511 (2013) § 6 (Appx. E § 4), 2013; Ord. 495 (2012) § 12, 2012; Ord. 493 (2012) § 4, 2012; Ord. 484 (2012) § 2, 2012; Ord. 479 (2011) § 2, 2011; Ord. 467 (2010) § 8 (Appx. B (part)), 2010; Ord. 425 (2009) § 3 (Att. B) (part), 2009; Ord. 420 (2008) § 8 (part), 2008; Ord. 419 (2008) §§ 5 – 9, 2008; Ord. 415 (2008) §§ 142 – 146, 2008; Ord. 405 (2007) § 5 (part), 2007; Ord. 402 (2007) § 2 (part), 2007; Ord. 384 (2007) §§ 9, 10, 2007; Ord. 380 (2007) § 3 (part), 2007; Ord. 367 (2006) § 105 (part), 2006)

17.381.050 Footnotes for zoning use table.

A. Where noted on the preceding use tables, the following additional restrictions apply:

1. Where applicable subject to Section 17.381.060, Provisions applying to special uses.
2. Minimum setbacks shall be twenty feet from any abutting right-of-way or property line; provided, however, advertising for sale of products shall be limited to two on-premises signs each not exceeding six square feet.
3. When located within urban growth areas (except UR), duplexes shall require five thousand square feet of minimum lot area. Duplexes located in the UR zone or outside of urban growth areas shall require double the minimum lot area required for the zone.
4. No greater than two acres for the purpose of construction and maintenance of a timber management road system, provided the total parcel is at least twenty acres.
5. Provided public facilities do not inhibit forest practices.
6. Where permitted, automobile service stations shall comply with the following provisions:
 - a. Sale of merchandise shall be conducted within a building, except for items used for the maintenance and servicing of automotive vehicles;
 - b. No automotive repairs other than incidental minor repairs or battery or tire changing shall be allowed;
 - c. The station shall not directly abut a residential zone; and
 - d. All lighting shall be of such illumination, direction, and color as not to create a nuisance on adjoining property or a traffic hazard.
7. In rural wooded (RW), rural protection (RP), or rural residential (RR) zones:
 - a. Animal feed yards and animal sales yards shall be located not less than two hundred feet from any property line; shall provide automobile and truck ingress and egress; and shall also provide parking and loading spaces so designed as to minimize traffic hazards and congestion. Applicants shall show that odor, dust, noise, and drainage shall not constitute a nuisance, hazard, or health problem to adjoining property or uses.
 - b. All stables and paddocks shall be located not closer than fifty feet to any property line. Odor, dust, noise, flies, or drainage shall not be permitted to create or become a nuisance to surrounding property.

8. A veterinary clinic or animal hospital shall not be located within fifty feet of a lot line in the rural protection (RP) or rural residential (RR) zones. In addition, the applicant may be required to provide additional measures to prevent or mitigate offensive noise, odor, light and other impacts.

9. Veterinary clinics and animal hospitals are allowed, provided a major part of the site fronts on a street and the director finds that the proposed use will not interfere with reasonable use of residences by reason of too close proximity to such residential uses, or by reason of a proposed exterior too different from other structures and character of the neighborhood. All activities shall be conducted inside an enclosed building.

10. A cemetery, crematorium, mausoleum, or columbarium shall have its principal access on a county roadway with ingress and egress so designed as to minimize traffic congestion, and shall provide required off-street parking spaces. No mortuary or crematorium in conjunction with a cemetery is permitted within two hundred feet of a lot in a residential zone.

11. A circus, carnival, animal display, or amusement ride may be allowed through administrative review in all industrial zones and any commercial zones, except neighborhood commercial (NC), for a term not to exceed ninety days, with a written approval of the director. The director may condition such approval as appropriate to the site. The director's decision may be appealed to the hearing examiner.

12. All buildings and activities shall be set back a minimum of fifty feet in FRL, MR, RW, RP, RR, RCO, RI or parks zones and thirty-five feet in all other zones from a side or rear lot line. All such uses shall access directly to a county right-of-way determined to be adequate by the county engineer, and be able to provide access without causing traffic congestion on local residential streets. Any such use shall not be materially detrimental to any adjacent (existing or future) residential development due to excessive traffic generation, noise, light or other circumstances. The director may increase setback, buffer and landscaping standards or impose other conditions to address potential impacts.

13. Public use airports and heliports are allowed only within the airport (A) zone established by this title. Heliports for the purpose of medical emergency facilities may be permitted in certain zones subject to a conditional use permit. All private landing strips, runways, and heliports shall be so designed and oriented that the incidences of aircraft passing directly over dwellings during their landing or taking off patterns is minimized. They shall be located so that traffic shall not constitute a nuisance to neighboring uses. The proponents shall show that adequate controls or measures will be taken to prevent offensive noise, vibrations, dust, or bright lights.

14. In those zones that prohibit residential uses, family day-care centers are only allowed in existing residential structures. Day-care centers shall have a minimum site size of ten thousand square feet and shall provide and thereafter maintain outdoor play areas with a minimum area of seventy-five square feet per child of total capacity. A sight-obscuring fence of at least four feet in height shall be provided, separating the play area from abutting lots. Adequate off-street parking and loading space shall be provided.

15. The number of animals on a particular property shall not exceed one large livestock, three small livestock, five ratites, six small animals, or twelve poultry:

- a. Per forty thousand square feet of lot area for parcels one acre or smaller or for parcels five acres or smaller located within two hundred feet of a lake or year-round

stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of the lot on which the animals are maintained, the above specifications may be exceeded by a factor of two;

b. Per twenty thousand square feet of area for parcels greater than one acre, but less than or equal to five acres, not located within two hundred feet of a lake or year-round stream; provided, that when no dwelling unit or occupied structure exists within three hundred feet of the lot on which the animals are maintained, the above specifications may be exceeded by a factor of two;

c. No feeding area or structure or building used to house, confine or feed livestock, small animals, ratites, or poultry shall be located closer than one hundred feet to any residence on adjacent property located within a rural wooded (RW), rural protection (RP), or rural residential (RR) zone, or within two hundred feet of any residence on adjacent property within any other zone; provided, a pasture (greater than twenty thousand square feet) shall not be considered a feed area.

16. The erection, construction, alteration, or maintenance of overhead or underground utilities by a public utility, municipality, governmental agency, or other approved party shall be permitted in any zone; provided, that any permanent above-ground structures not located within a right-of-way or easement shall be subject to the review of the director. Utility transmission and distribution lines and poles may exceed the height limits otherwise provided for in this title. Water towers which exceed thirty-five feet in height, solid waste collection, transfer and/or handling sites in any zone shall be subject to a conditional use permit. These provisions do not apply to wireless communication facilities, which are specifically addressed in Chapter 17.470.

17. Reserved.

18. One piece of heavy equipment may be stored in any single-family zone; provided, that it is either enclosed within a permitted structure, or screened to the satisfaction of the director.

19. All development within the Silverdale Design District boundaries must be consistent with the Silverdale Design Standards.

20. Site plans for public schools shall include an area identified and set aside for the future placement of a minimum of four portable classroom units. The area set aside may not be counted towards meeting required landscaping or parking requirements.

21. Outdoor contractor's storage yards accessory to a primary residence shall be limited to not more than ten heavy equipment vehicles or heavy construction equipment. The use shall be contained outside of required setbacks within a contained yard or storage building. The storage yard and/or building shall be screened from adjacent properties with a screening buffer a minimum of twenty-five feet in width and capable of providing functional screening of the use. Minimum lot size shall be one hundred thousand square feet.

22. Stump grinding, soil-combining and composting in rural protection and rural residential zones must meet the following requirements:

a. The subject property(ies) must be one hundred thousand square feet or greater in size;

b. The use must take direct access from a county-maintained right-of-way;

- c. A fifty-foot natural vegetation buffer must be maintained around the perimeter of the property(ies) to provide adequate screening of the use from neighboring properties;
 - d. The subject property(ies) must be adjacent to an industrial zone or a complementary public facility such as a sewage treatment plant or solid waste facility;
 - e. The proposed use must mitigate noise, odor, dust and light impacts from the project; and
 - f. The use must meet all other requirements of this title.
23. Home businesses located in the forest resource lands (FRL) must be associated with timber production and/or harvest.
24. Mobile homes are prohibited, except in approved mobile home parks.
25. All uses must comply with the town development objectives of Section 17.321B.025.
26. Within the MVC zone, a new single-family dwelling may be constructed only when replacing an existing single-family dwelling. All replacement single-family dwellings and accessory structures within the MVC zone must meet the height regulations, lot requirements, and impervious surface limits of the MVR zone.
27. Subject to the temporary permit provisions of Chapter 17.455.
28. Allowed only within a commercial center limited in size and scale (e.g., an intersection or corner development).
29. The Bethel Road Corridor Development Plan sets forth policies and regulations for development within the highway tourist commercial zone located along the Bethel corridor in South Kitsap from SE Ives Mill Road to the Port Orchard city limits. Development within the Bethel Road corridor highway tourist commercial zone shall be conducted in a manner consistent with the policies and regulations of the Land Use Element of the Bethel Road Corridor Development Plan.
30. The Design Standards for the Community of Kingston set forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the Design Standards for the Community of Kingston may be referred to on the Kitsap County web page or at the department of community development front counter.
31. Uses permitted only if consistent with an approved master plan pursuant to Chapter 17.415. Where a master plan is optional and the applicant chooses not to develop one, all uses shown as permitted require an administrative conditional use permit.
32. For properties with an approved master plan, except as described in Section 17.370.025, all uses requiring a conditional use permit will be considered permitted uses.
33. Must be located and designed to serve adjacent area.
34. Bed and breakfast houses with one to four rooms require an administrative conditional use permit; bed and breakfast houses with five or more rooms require a hearing examiner conditional use permit. Bed and breakfast houses serving meals to patrons other than overnight guests require a hearing examiner conditional use permit.
35. The use shall be accessory and shall not occupy more than twenty-five percent of the

project area.

36. Requires a conditional use permit when abutting SVR or SVLR zone.
37. Permitted only within a mixed use development or office complex.
38. Customer service-oriented uses over five thousand square feet are prohibited.
39. For the purpose of construction and maintenance of a timber management road system.
40. Self-storage facilities must be accessory to the predominant residential use of the property, sized consistently for the number of lots/units being served and may serve only the residents of the single-family plat or multi-family project.
41. Adult family homes serving one to six residents (excluding proprietors) are permitted uses. Adult family homes serving more than six applicable residents (excluding proprietors) require an administrative conditional use permit (ACUP).
42. All business, service repair, processing, storage, or merchandise display on property abutting or across the street from a lot in any residential zone shall be conducted wholly within an enclosed building unless screened from the residential zone by a sight-obscuring fence or wall.
43. Where a family member is in need of special, frequent and routine care and assistance by reason of advanced age or ill health, a manufactured home or mobile home may be placed upon the same lot as a single-family dwelling for occupancy by the individual requiring or providing such special care subject to the following limitations:
 - a. Not more than two individuals shall be the recipients of special care;
 - b. No rent, fee, payment or charge in lieu thereof may be made for use of the single-family dwelling or manufactured/mobile home as between the recipients or providers of special care;
 - c. The manufactured/mobile home must meet the setback requirements of the zone in which it is situated;
 - d. A permit must be obtained from the director authorizing such special care manufactured/mobile home. Such permit shall remain in effect for one year and may, upon application, be extended for one-year periods, provided there has been compliance with the requirements of this section;
 - e. The manufactured/mobile home must be removed when the need for special care ceases; and
 - f. Placement of the manufactured/mobile home is subject to applicable health district standards for water service and sewage disposal.
44. Certain development standards may be modified for mixed use developments, as set forth in Section 17.382.035 and Chapter 17.400.
45. New or expanded commercial developments that will result in less than five thousand gross square feet of total commercial use within a development site or residential developments of fewer than four dwelling units are permitted outright outside of the Silverdale UGA.

46. Allowed only as an accessory use to a park or recreational facility greater than twenty acres in size.
47. As a hearing examiner conditional use, UM and UH zones adjacent to a commercial zone may allow coordinated projects that include commercial uses within their boundaries. Such projects must meet the following conditions:
- a. The project must include a combination of UM and/or UH and commercially zoned land;
 - b. The overall project must meet the density required for the net acreage of the UM or UH zoned land included in the project;
 - c. All setbacks from other residentially zoned land must be the maximum required by the zones included in the project;
 - d. Loading areas, dumpsters and other facilities must be located away from adjacent residential zones; and
 - e. The residential and commercial components of the project must be coordinated to maximize pedestrian connectivity and access to public transit.
48. Within urban growth areas, all new residential subdivisions, single-family or multi-family developments are required to provide an urban level of sanitary sewer service for all proposed dwelling units.
49. Mixed use development is prohibited outside of urban growth areas.
50. The 2007 Manchester Community Plan, Appendix A – Manchester Design Standards, sets forth policies and regulations for properties within the Manchester Village commercial (MVC) district. All development within the MVC district must be consistent with these standards.
51. Storage of shipping containers is prohibited unless allowed as part of a land use permit and/or approval. Placement of storage containers allowed only with an approved temporary permit subject to the provisions of Section 17.455.090(I).
52. Aggregate production and processing only. Allowed only if directly connected to an approved surface mining permit approved by the Washington State Department of Natural Resources (DNR).
53. Commercial or industrial uses otherwise prohibited in the zone may be allowed as a component of a home business subject to the requirements of Section 17.381.060(B).
54. The gross floor area shall not exceed four thousand square feet.
55. Auction house and all items to be auctioned shall be fully enclosed within a structure.
56. There shall be no more than six rental vehicles kept on site.
57. When a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone, it shall be treated as a Type II administrative decision.
58. In addition to the other standards set forth in the Kitsap County Code, espresso stands are subject to the following conditions:

- a. Drive aisles/stacking lanes shall be designed to accommodate a minimum of three vehicles per service window/door. Each stacking lane shall be sized measuring eight and one-half feet in width and twenty feet in length, with direct access to the service window. The drive aisles/stacking lanes shall be designed to prevent any vehicles from interfering with public or private roadways, pedestrian circulation, traffic circulation, parking areas or other required development amenities.
 - b. Subject to provisions set forth in Chapter 17.435, drive aisles and parking areas must also be paved in urban growth areas and include, at minimum, hard compacted surfaces in rural areas. Such surfaces must be addressed with required drainage facilities. A joint parking agreement shall be required if parking cannot be accommodated on site.
 - c. All structures must be permanently secured to the ground.
 - d. Restroom facilities must be available for employees. Portable or temporary restroom facilities shall not be used to meet this requirement.
59. Use is permitted in the South Kitsap Industrial Area only.
60. All development in Illahee shall be consistent with the Illahee Community Plan.
61. Use prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards).
62. General retail merchandise stores greater than one hundred twenty-five thousand square feet in size are prohibited in the Waaga Way Town Center area (see the Silverdale Design Standards). Additional square footage may be allowed for projects greater than twenty-five acres in size.
63. Restaurants, high-turnover that provide drive-through service must be compatible with the pedestrian focus of the Waaga Way Town Center (see the Silverdale Design Standards). Such businesses shall minimize potential conflicts with pedestrian and bicycle traffic and gathering areas by subordinating the drive-through service to the overall development design.
64. When a component of development is located within the rural commercial or rural industrial zone and involves the conversion of previously undeveloped land which abuts a residential zone, it shall be treated as a Type III administrative decision.
65. No car washes allowed in RCO or RI.
66. Personal service businesses in the RCO are limited to four chairs and are intended for local use only.
67. No aquariums are allowed in the RCO zone. Galleries, museums, historic and cultural exhibits should be geared toward the character of the rural area, rural history, or a rural lifestyle.
68. In the RI zone, warehousing and distribution should be focused on agricultural, food, or forestry uses only.
69. In the RI zone, cold storage facilities are only allowed for agricultural and food uses.
70. In the RCO and RI zones, slaughterhouses and animal processing may have a retail component not to exceed four thousand square feet.

71. In the RCO zone, custom art and craft stores are limited to studio type and size only.
72. Must be accessory to an immediate primary use.
73. Heavy construction, farming and forestry equipment only.
74. Allowed for existing airports only.
75. All storage must be screened from public view by a twenty-five-foot buffer in order to meet rural compatibility. Applicant must also demonstrate how the storage would serve the immediate population.
76.
 - 0 – 4,000 square feet = P
 - 4,001 – 10,000 square feet = ACUP
 - 10,001 – 15,000 square feet = C
 - 15,001 square feet and above = X
77. All dwelling units must be included within a senior living development and consistent with the residency requirements of Section 17.332.080(A).
78. Allowed only in concentrated commercial/mixed use areas designated at the time of performance-based development approval for a senior living development. The use shall be sized and located consistent with the needs of the proposed senior living development.
79. Use prohibited within the portion of the Gorst urban growth area between the Sinclair Inlet shoreline and State Highways 3 and 16.
80. Use prohibited within the Gorst urban growth area.
81. Use permitted outright in the Gorst urban growth area.
82. Use requires a conditional use permit in the Gorst urban growth area.
83. In the Gorst urban growth area, must take access from state route. Auto uses with underground storage tanks (such as gas stations) shall not be located in the Gorst Creek floodplain.
84. Use prohibited on the Central Kitsap Community Campus. (See the Silverdale Design Standards.)
85. Use requires an administrative conditional use permit (ACUP) or hearings examiner conditional use permit (C) if located on the Central Kitsap Community Campus. (See Silverdale Design Standards.)
86. If located on the Central Kitsap Community Campus, any mixed use development must be in a single building, and total floor area devoted to commercial uses shall not exceed seventy percent. Other mixed use development standards and waivers set forth in Section 17.382.035 shall not apply to the Central Kitsap Community Campus. (See Silverdale Design Standards.)
87. If located on the Central Kitsap Community Campus, retail/office uses are allowed if accessory and directly related to priority public or community uses. (See the Silverdale Design Standards.)

88. Uses allowed on the Poplar's property, as defined by the Silverdale Design Standards, shall not be subject to footnotes 84 through 87 until such time it is substantially redeveloped; but will be subject to all other provisions of this title.

(Ord. 518 (2014) § 3 (Att. C), 2014: Ord. 519 (2014) § 5, 2014: Ord. 511 (2013) § 6 (Appx. E § 5), 2013: Ord. 495 (2012) § 13, 2012: Ord. 493 (2012) § 4, 2012: Ord. 467 (2010) § 8 (Appx. B (part)), 2010: Ord. 425 (2009) § 3 (Att. B) (part), 2009: Ord. 420 (2008) § 8 (part), 2008: Ord. 419 (2008) § 10, 2008: Ord. 415 (2008) § 147: Ord. 405 (2007) § 5 (part), 2007: Ord. 384 (2007) § 11, 2007: Ord. 381 (2007) § 3, 2007: Ord. 367 (2006) § 105 (part), 2006)

17.381.060 Provisions applying to special uses.

A. In addition to other standards and requirements imposed by this title, all uses included in this section shall comply with the provisions stated herein. Should a conflict arise between the requirements of this section and other requirements of this title, the most restrictive shall apply.

B. Uses with additional restrictions:

1. Home Business. Home businesses may be allowed for commercial or industrial uses within residential zones subject to the following conditions:

a. Incidental home business, as defined below, shall be permitted in all residential zones and have no permit required.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as not to give an outside appearance of a business;
- (3) The business shall be conducted entirely within the residence;
- (4) The residence shall be occupied by the owner of the business;
- (5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (6) No clients or customers shall visit or meet for an appointment at the residence;
- (7) No employees or independent contractors are allowed to work in the residence other than family members who reside in the residential dwelling;
- (8) No activities that create noise, increase risk of fire, or in any way threaten the safety and tranquility of neighboring residents are permitted;
- (9) No more than two pick-ups and/or deliveries per day are allowed, not including normal U.S. mail;
- (10) The business shall not occupy more than twenty-five percent of the gross floor area of the residence; and
- (11) No signs to advertise the business/occupation shall be allowed on the premises (except attached to mailbox not to exceed one square foot).

b. Minor home business, as defined below, shall be permitted in all residential zones subject to approval by the director. Said approval is not transferable to any individual,

future property owner or location.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as not to give an outside appearance of a business;
- (3) The residence shall be occupied by the owner of the business;
- (4) The business shall occupy no more than thirty percent of the gross floor area of the residence;
- (5) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (6) No more than two employees, including proprietors (or independent contractors), are allowed;
- (7) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director;
- (8) No outside storage shall be allowed; and
- (9) In order to assure compatibility with the dominant residential purpose, the director may require:
 - i. Patronage by appointment.
 - ii. Additional off-street parking.
 - iii. Other reasonable conditions.

c. Moderate home business, as defined below, shall be permitted in RW, RP, RR and URS zones subject to approval by the director. Said approval is not transferable to any individual, future property owner or location.

- (1) Business uses shall be incidental and secondary to the dominant residential use;
- (2) The residential character of the building shall be maintained and the business shall be conducted in such a manner as to moderate any outside appearance of a business;
- (3) The residence shall be occupied by the owner of the business;
- (4) The business shall not infringe upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes;
- (5) No more than five employees (or independent contractors) are allowed;
- (6) Nonilluminated signs not exceeding four square feet are permitted, subject to a sign permit approved by the director; and
- (7) In order to ensure compatibility with the dominant residential purpose, the director may require:

- i. Patronage by appointment.
 - ii. Additional off-street parking.
 - iii. Screening of outside storage.
 - iv. A conditional use permit (required for engine or vehicle repair or servicing).
 - v. Other reasonable conditions.
2. Pets and Exotic Animals. Pets, nontraditional pets and exotic animals are subject to the following conditions:
 - a. Pets which are kept inside of a primary structure as household pets in aquariums, terrariums, cages or similar containers shall not be limited in number by this title. Other pets, excluding cats, which are kept indoors shall be limited to five;
 - b. Pets which are kept outside of the primary structure shall be limited to three per household on lots less than twenty thousand square feet in area, only one of which may be a nontraditional pet; five per household on lots of twenty thousand to thirty-five thousand square feet, only two of which may be nontraditional pets; with an additional two pets per acre of site area over thirty-five thousand square feet up to a limit of twenty;
 - c. The keeping or possession of exotic animals is subject to state and federal laws and, other than in a primary structure as described in subsection (B)(3) of this section, shall require approval of the director. Possession of any dangerous animal or potentially dangerous animal is prohibited in all zones except as provided in Section 7.14.010(9); and
 - d. No feeding area or structure used to house, confine or feed pets shall be located closer than the minimum yard setbacks for the zone in which they are located. No feeding area or structure used to house, confine or feed non-traditional pets or exotic animals shall be located closer than fifty feet from any residence on adjacent property.
3. Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones, subject to the following criteria:
 - a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
 - b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
 - c. Only one ADU shall be allowed per lot;
 - d. Owner of the property must reside in either the primary residence or the ADU;
 - e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller;
 - f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage);
 - g. The ADU shall be designed to maintain the appearance of the primary residence;
 - h. All setback requirements for the zone in which the ADU is located shall apply;

- i. The ADU shall meet the applicable health district standards for water and sewage disposal;
- j. No mobile homes or recreational vehicles shall be allowed as an ADU;
- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking; and
- l. An ADU is not permitted on the same lot where an accessory living quarters exists.
- m. Existing, Unpermitted Accessory Dwelling Units.

(1) Applicability. The provisions of this subsection shall only apply to property and property owners who can establish all of the following criteria:

- i. The parcel is within the unincorporated area of Kitsap County;
- ii. An accessory dwelling unit (ADU), as defined in Section 17.110.020, or similar dwelling previously defined as an accessory living quarters (ALQ) or an accessory rental unit (ARU) is located on the parcel;
- iii. The accessory dwelling has not received any prior review and/or approval by Kitsap County;
- iv. The property owner did not construct or cause to have the accessory dwelling constructed;
- v. The property owner did not own the property when the accessory dwelling was constructed;
- vi. The property owner exercised due diligence when purchasing the property with the existing accessory dwelling to discover whether or not the accessory dwelling was approved when purchasing the property. Due diligence is presumed to have occurred if the property owner can document the following conditions:
 - (a) That county tax records or parcel records contain no inquiry or other notice that the ADU was unpermitted; and
 - (b) That the current owner requested and obtained a title report with no exceptions, restrictions, enforcement actions, permitting or similar issues pertinent to the ADU; and
 - (c) That the prior owner's property and improvement disclosures at the time of sale did not indicate any permitting, compliance or similar issues pertinent to the ADU; and
 - (d) That any third party involved in the sale or inspection of the ADU did not disclose any permitting, compliance or other issues pertinent to the ADU.
- vii. The parcel has a history of property tax assessment and a history of continuous tax payments on the principal and the accessory dwelling.
- viii. Acceptable documentation for subsections (B)(3)(m)(1)(i) through (vii) of this section may include but are not limited to current or previous county assessment records, real estate disclosure forms, listing agreements, records

of sale, title reports and aerial photography establishing compliance with the required conditions.

(2) Application. Persons who meet the criteria of subsection (B)(3)(m)(1) of this section desiring to gain approval of their accessory dwelling shall make application to the director of the department of community development on forms provided by the department, with fees to be paid at the time of application as provided in subsection (B)(3)(m)(5) of this section. Such application shall be a Type II permit under Chapter 21.04.

(3) Approval. The director, or his designee, is authorized to approve submitted applications that satisfy all of the following:

- i. All the requirements of this section;
- ii. All the applicable zoning, health, fire safety and building construction requirements:
 - (a) The applicable requirements shall be those in effect when the accessory dwelling was constructed. The burden of proof of when the accessory dwelling was constructed shall be upon the applicant and may consist of dated aerial photography, tax assessments, surveys or similar documents.
 - (b) If the applicant cannot prove a date of construction, the applicable requirements shall be those currently in effect on the date of application.
 - (c) If the applicant can only show a date range for construction, the applicable requirements shall be the latest requirements of the range;
- iii. Proof of adequate potable water;
- iv. Proof of adequate sewage disposal systems for both the principal and the accessory dwelling. Proof shall be shown by Kitsap County health district approval; and
- v. Verification by Kitsap County inspection staff that the accessory dwelling is habitable.

Applications approved subject to these provisions shall be considered legal nonconforming uses.

(4) Variances.

- i. When reviewing the application, the director is authorized to grant an administrative variance to the requirements of subsection (B)(3)(m)(3)(ii) of this section only when unusual circumstances relating to the property cause undue hardship in the application of subsection (B)(3)(m)(3)(ii) of this section. The granting of an administrative variance shall be in the public interest. An administrative variance shall be granted at the director's sole discretion only when the applicant has proven all of the following:
 - (a) There are practical difficulties in applying the regulations of subsection (B)(3)(m)(3)(ii) of this section;
 - (b) The applicant did not create or participate in creating the practical difficulties;

- (c) A variance meets the intent and purpose of this section;
 - (d) The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
 - (e) The variance is the minimum necessary to grant relief to the applicant.
- ii. The director is authorized to require mitigation in connection with the administrative variance to minimize the effect of the variance on surrounding properties.
 - iii. In reviewing a request for an administrative variance, the director shall notify and solicit comments from surrounding property owners of the application and the intended variance and mitigation. The director shall consider such comments when determining whether or not to approve the variance. The director is further authorized to require mediation to resolve issues arising from the notification process and the costs of such mediation shall be paid by the applicant.
 - iv. Variance requests submitted as part of this subsection shall be considered as part of the original application and not subject to additional procedural or fee requirements.
- (5) Fees. Applicants shall pay a fee established by resolution at the time of application. Additionally, applicants shall pay notification costs, reinspection fees, additional review and other applicable fees in accordance with Chapter 21.06. Applicants may initiate a staff consultation in considering or preparing an application under these provisions. The staff consultation fee established in Chapter 21.06 shall not, however, be credited towards any subsequent application submitted under these provisions.
- (6) Land Use Binder. Following approval of the accessory dwelling and any administrative variance, the applicant shall record a land use permit binder with the county auditor using forms provided by Kitsap County department of community development.
- (7) Expiration. Qualifying property owners shall have one year from the time that the noncompliant ADU is discovered to submit an application for approval of the ADU.
4. Accessory Living Quarters. In order to encourage the provision of affordable housing, accessory living quarters may be located in residential zones, subject to the following criteria:
- a. Accessory living quarters shall be located within an owner-occupied primary residence;
 - b. Accessory living quarters are limited in size to no greater than fifty percent of the habitable area of the primary residence;
 - c. The accessory living quarters are subject to applicable health district standards for water and sewage disposal;
 - d. Only one accessory living quarters shall be allowed per lot;

- e. Accessory living quarters are to provide additional off-street parking with no additional street side entrance; and
- f. Accessory living quarters are not allowed where an accessory dwelling unit exists.
- g. Existing Unpermitted Accessory Living Quarters. Existing unpermitted accessory living quarters may be approved under the provisions of subsection (B)(3)(m) of this section.

5. Adult Entertainment.

a. The following uses are designated as adult entertainment uses:

- (1) Adult bookstore;
- (2) Adult mini-motion picture theater;
- (3) Adult motion picture theater;
- (4) Adult novelty store; and
- (5) Cabaret.

b. Restrictions on Adult Entertainment Uses. In addition to complying with the other sections of the Zoning Ordinance, adult entertainment uses shall not be permitted:

- (1) Within one thousand feet of any other existing adult entertainment use; and/or
- (2) Within five hundred feet of any noncommercial zone, or any of the following residentially related uses:
 - i. Churches, monasteries, chapels, synagogues, convents, rectories, or church-operated camps;
 - ii. Schools, up to and including the twelfth grade, and their adjunct play areas;
 - iii. Public playgrounds, public swimming pools, public parks and public libraries;
 - iv. Licensed day care centers for more than twelve children;
 - v. Existing residential use within a commercial zone.
- (3) For the purposes of this section, spacing distances shall be measured as follows:
 - i. From all property lines of any adult entertainment use;
 - ii. From the outward boundary line of all residential zoning districts;
 - iii. From all property lines of any residentially related use.

c. Signage for Adult Entertainment Uses.

- (1) In addition to other provisions relating to signage in the Zoning Ordinance, it shall be unlawful for the owner or operator of any adult entertainment use establishment or any other person to erect, construct, or maintain any sign for the adult entertainment use establishment other than one primary sign and one

secondary sign, as provided herein.

(2) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- i. Be a flat plane, rectangular in shape;
- ii. Not exceed seventy-five square feet in area; and
- iii. Not exceed ten feet in height or ten feet in length.

(3) Primary and secondary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- i. The name of the regulated establishment; and/or
- ii. One or more of the following phrases:
 - (a) "Adult bookstore,"
 - (b) "Adult movie theater,"
 - (c) "Adult cabaret,"
 - (d) "Adult novelties,"
 - (e) "Adult entertainment."

(4) Primary signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

- i. Each letter forming a word on a primary or secondary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- ii. Secondary signs shall have only one display surface. Such display surface shall:
 - (a) Be a flat plane, rectangular in shape;
 - (b) Not exceed twenty square feet in area;
 - (c) Not exceed five feet in height and four feet in width; and
 - (d) Be affixed or attached to any wall or door of the establishment.

6. Storage of Junk Motor Vehicles.

a. Storage of junk motor vehicles on any property outside of a legally constructed building (minimum of three sides and a roof) is prohibited, except where the storage of up to six junk motor vehicles meets one of the following two conditions:

- (1) Any junk motor vehicle(s) stored outdoors must be completely screened by a sight-obscuring fence or natural vegetation to the satisfaction of the director (a covering such as a tarp over the vehicle(s) will not constitute an acceptable visual barrier). For the purposes of this section, "screened" means not visible from any portion or elevation of any neighboring or adjacent public or private property,

easement or right-of-way; or

(2) Any junk motor vehicle(s) stored outdoors must be stored more than two hundred fifty feet away from all property lines.

b. Environmental Mitigation Agreement. The owner of any such junk motor vehicle(s) must successfully enter into an environmental mitigation agreement with the department of community development (the "department") regarding the property where such vehicle(s) will be located or stored.

(1) An environmental mitigation agreement between a property owner and the department is required before the outdoor storage of up to six screened junk motor vehicles will be approved. A property owner may enter into such agreement with the department for a one-time fee of \$10.00 per vehicle, the proceeds of which shall be used to assist with clean-up costs associated with the administration of Chapter 9.56.

(2) In order to mitigate any potential environmental impact from the storage of these junk motor vehicles, the property owner must agree to institute one of the following two preventative measures:

i. Each junk motor vehicle must be drained of all oil and other fluids including, but not limited to, engine crankcase oil, transmission fluid, brake fluid and radiator coolant or antifreeze prior to placing the vehicle on site; or

ii. Drip pans or pads must be placed and maintained underneath the radiator, engine block, transmission and differentials of each junk motor vehicle to collect residual fluids.

iii. Either preventative measure shall require that the owner of such vehicle(s) clean up and properly dispose of any visible contamination resulting from the storage of junk motor vehicles. The agreement will require the property owner to select one of the two preventative measures and to allow for an initial inspection of the property by the department to assure that the preventative measure has been implemented to the satisfaction of the department. By entering into the agreement, the property owner further agrees to allow the department entry onto the property on an annual basis for reinspection to assure compliance with the approved agreement. If a property is found to be in compliance with the terms of the agreement for two consecutive inspections, the department may waive the annual inspection requirement. A property owner found to be in violation of the agreement may be issued a civil infraction pursuant to this title and could later be deemed a nuisance in accordance with Chapter 9.56.

7. Model Homes. Notwithstanding any other provision of this code, model homes may be constructed within a subdivision prior to final plat approval by the board. The purpose of the model homes shall be to demonstrate a variety of housing designs together with associated on-site improvements, e.g., landscaping, improved driveway, patios. Model homes shall be subject to the following requirements:

- a. The subdivision shall have received preliminary plat approval;
- b. One model home may be occupied as a temporary real estate office;
- c. A model home may not be occupied as a dwelling unit or sold until the approved final

plat is recorded;

- d. The number of model home permits that may be issued for any approved preliminary plat or division thereof shall not exceed six;
- e. If the lots to be used for model home purposes are in a block of two or more contiguous lots, temporary uses may be incorporated onto one or more lots, including temporary offices, parking, parks and playgrounds, subject to the approval of the director, and subject to obtaining a temporary use permit, which shall authorize the temporary uses for a period of one year. The director may extend the temporary use permit for up to two additional periods of six months each;
- f. Lots used for model homes must be clear of restrictions or easements that may be subject to line changes before recording;
- g. Stormwater management facilities must be in place and/or approved for recording. Temporary erosion control must be completed prior to occupancy of a model home;
- h. Roads must be constructed to final alignment and grade such that the building inspector can determine if connecting driveways meet county standards prior to occupancy of a model home;
- i. Permanent or temporary fire flow for the final plat must be approved by the fire marshal, constructed and operational prior to occupancy of a model home; and
- j. Final plat restoration bonds must be posted prior to occupancy of a model home.

8. Guest Houses. Guest house may be located in those zones specified in Section 17.381.040 subject to the following conditions:

- a. Guest houses shall not exceed nine hundred square feet. Dimensions are determined by exterior measurements;
- b. Guest houses shall not include any kitchen plumbing, appliances or provisions for cooking;
- c. Guest houses shall not include more than one bathroom (may be full bathroom);
- d. Guest houses shall not include more than two habitable rooms and a bathroom;
- e. Guest houses shall not be rented separately from the primary residence;
- f. Only one guest house is allowed per parcel;
- g. No guest house is allowed on a parcel with an existing accessory dwelling unit or accessory living quarters;
- h. Newly constructed guest houses must meet the required setbacks for a single-family dwelling consistent with their zone. Legally established, existing structures built before May 7, 1998, may be remodeled into guest houses at their existing setback;
- i. Guest houses must be within one hundred fifty feet of the primary residence;
- j. Guest houses must use the same street entrance as the primary structure;
- k. Guest houses must meet all applicable health district standards for water

provision and sewage disposal; and

I. The property owner must record a notice to title outlining these conditions. This notice must be approved by the department and may not be extinguished without the county's written permission.

(Ord. 459-2010 § 2, 2010: Ord. 419 (2008) § 11, 2008: Ord. 415 (2008) § 148, 2008: Ord. 381 (2007) § 3, 2007: Ord. 367 (2006) § 105 (part), 2006)

**Chapter 17.450
(Repealed)***

- * **Editor's note:** Former Ch. 17.450, "View Blockage Requirements," was repealed by § 6 of Ord. 519 (2014). Sections 1 – 4 of Res. 240-1984, § 13 of Ord. 291 (2002) and §§ 7 and 8 of Ord. 346 (2005) were formerly codified in this chapter.

**Chapter 17.455
INTERPRETATIONS AND EXCEPTIONS**

Sections:

17.455.010 Director authority to issue administrative decisions.

17.455.060 (Repealed)

17.455.080 Pending long or short subdivisions.

17.455.090 Temporary permits.

17.455.100 Number of dwellings per lot.

17.455.110 Obnoxious things.

17.455.120 Existing lot aggregation for tax purposes.

17.455.010 Director authority to issue administrative decisions.*

It shall be the responsibility of the director himself/herself to interpret ambiguous and/or conflicting code and apply the provisions of this title, Kitsap County County-wide Planning Policies, Kitsap County Comprehensive Plan and applicable sub-area plans.

At the request of the applicant, in writing, the director may also authorize a variation of up to ten percent of any numerical standard, except density, when unusual circumstances cause undue hardship in the strict application of this title; provided, such a variance shall be approved only when all of the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant and do not apply to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;
- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- D. The variance is the minimum necessary to grant relief to the applicant.
- E. An approved variance shall become void in three years if a complete application has not been received. The director's response, including findings for granting the variation, shall be in writing and kept in the department files.

(Ord. 490 (2012) § 5(d), 2012; Ord. 415 (2008) § 213, 2008; Ord. 256 (2001) § 2, 2001; Ord. 234 (1999) § 2 (part), 1999; Ord. 216 (1998) § 4 (part), 1998)

* **Editor's Note:** Former subsections (A), (B), (D) and (E) of this section were repealed by § 5(d) of Ord. 490 (2012).

17.455.060 (Repealed)*

* **Editor's Note:** Former Section 17.455.060, "Existing uses," was repealed by § 5(e) of Ord. 490 (2012). Section 4 (part) of Ord. 216 (1998), § 2 (part) of Ord. 234 (1999) and § 214 of Ord. 415 (2008) were formerly codified in this section.

17.455.080 Pending long or short subdivisions.

provisions of the Kitsap County Code; provided, that such uses and structures may not be approved by the director for a period greater than ninety days.

H. The occupancy of a recreational vehicle (RV) for a period not to exceed three months subject to the following conditions:

1. The subject property must be located in the Rural Wooded (RW), Rural Protection (RP), or Rural Residential (RR) zones;
2. The RV must be occupied by the property owner or family member;
3. The RV must be provided with approved utilities including septic or sewer (health district approval), water, and electrical power;
4. The location of the RV must meet all setbacks required by the underlying zone;
5. The director may impose additional conditions as appropriate to ensure that the RV use is compatible with the surrounding properties;
6. The minimum RV size shall be two hundred square feet; and
7. A permit will be required each time the RV is placed on a parcel. If the RV is placed on the same parcel each year the application fee will be half of the initial fee.

I. Placement of a storage container on a property developed with single-family dwelling or properties with an active building permit for construction of a residential or commercial building is subject to the following conditions:

1. The container must meet all applicable setbacks for the zone; and
2. The storage container may not be placed on site for more than ninety days; however, in instances where a building permit for a single-family dwelling or commercial development is active, the container may remain on site until thirty days after the permit expires or receives final inspection/certificate of occupancy.

(Ord. 415 (2008) § 215, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.100 Number of dwellings per lot.

Except as provided for elsewhere in this title, there shall be no more than one dwelling unit per lot.

(Ord. 415 (2008) § 216, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.110 Obnoxious things.

In all zones, except as provided for elsewhere in this title, no use shall produce noise, smoke, dirt, dust, odor, vibration, heat, glare, toxic gas or radiation which is materially deleterious to surrounding people, properties or uses. Lighting is to be directed away from adjoining properties. Not more than one foot candle of illumination may leave the property boundaries.

(Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.120 Existing lot aggregation for tax purposes.

For the purposes of this title, parcels which have been aggregated by the county for tax purposes shall be considered separate legally existing lots of record.

(Ord. 415 (2008) § 217, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

**Chapter 17.530
ENFORCEMENT**

Sections:

17.530.010 Authorization.**17.530.020 Penalties.****17.530.030 Nuisance.****17.530.040 Permit or license in violation.****17.530.050 Written assurance of discontinuance.****17.530.010 Authorization.**

The director is authorized to enforce this title, and to designate county employees as authorized representatives of the department to investigate suspected violations of this title, and to issue orders to correct violations and notices of infraction.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.020 Penalties.

The violation of any provision of this title shall constitute a Class I civil infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Infractions shall be processed in accordance with the provisions of the adopted Kitsap County Civil Enforcement Ordinance (Chapter 2.116 of this code).

(Ord. 216 (1998) § 4 (part), 1998)

17.530.030 Nuisance.

Any use, building or structure in violation of this title is unlawful, and a public nuisance. Notwithstanding any other remedy or means of enforcement of the provisions of this title, including but not limited to Kitsap County Code Chapter 9.56 pertaining to the abatement of public nuisances, the prosecuting attorney, any person residing on property abutting the property with the proscribed condition, and the owner or owners of land abutting the land with the proscribed condition may each bring an action for a mandatory injunction to abate the nuisance in accordance with the law. The costs of such a suit shall be taxed against the person found to have violated this title.

(Ord. 292 (2002) § 11, 2002; Ord. 216 (1998) § 4 (part), 1998)

17.530.040 Permit or license in violation.

Any permit or license issued by the county which was not in conformity with provisions of the Zoning Ordinance then in effect is null and void.

(Ord. 216 (1998) § 4 (part), 1998)

17.530.050 Written assurance of discontinuance.

The director may accept a written assurance of discontinuance of any act in violation of this title from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this title.

(Ord. 216 (1998) § 4 (part), 1998)

Appendix B

Pages from 2011 Title 17

Chapter 17.455

INTERPRETATIONS AND EXCEPTIONS

Sections:

- 17.455.010 Director authority to interpret code provisions and issue administrative decisions.
- 17.455.060 Existing uses.
- 17.455.080 Pending long or short subdivisions.
- 17.455.090 Temporary permits.
- 17.455.100 Number of dwellings per lot.
- 17.455.110 Obnoxious things.
- 17.455.120 Existing lot aggregation for tax purposes.

17.455.010 Director authority to interpret code provisions and issue administrative decisions.

It shall be the responsibility of the director himself/herself to interpret ambiguous and/or conflicting code and apply the provisions of this title, Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan and applicable sub-area plans.

A. The director may initiate an administrative code interpretation without an applicant request at any time, and the interpretation will be made available pursuant to Title 21 by the department with the development code to which it applies.

B. Any person(s) may submit an application for code interpretations from the director and the interpretation will be made available by the department pursuant to Title 21 with the development code to which it applies.

C. At the request of the applicant, in writing, the director may also authorize a variation of up to ten percent of any numerical standard, except density, when unusual circumstances cause undue hardship in the strict application of this title; provided, such a variance shall be approved only when all of the following conditions and facts exist:

1. There are special circumstances applicable to the subject property, including size,

shape, topography, location or surroundings, that were not created by the applicant and do not apply to other property in the same vicinity or zone;

2. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;

3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and

4. The variance is the minimum necessary to grant relief to the applicant.

5. An approved variance shall become void in three years if a complete application has not been received. The director's response, including findings for granting the variation, shall be in writing and kept in the department files.

D. All code interpretations are binding and may be appealed by any party through the process pursuant to Title 21.

E. All code interpretations, hearings examiner decisions on such interpretations and board reviews shall be a permanent record of the department of community development and included in the Kitsap County Department of Community Development Policy Manual. Code interpretations shall be made available to the public and posted on the county website.

(Ord. 415 (2008) § 213, 2008: Ord. 256 (2001) § 2, 2001: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.060 Existing uses.

A. Except as hereinafter specified, any use, building, or structure lawfully existing at the time of the enactment of this title may be continued, even though such use, building, or structure may not conform to the provisions of this title for the zone in which it is located. A use or structure not conforming to the zone in which it is located shall not be altered or enlarged in any manner, unless such alteration

or enlargement would bring the use or structure into greater conformity with the uses permitted within, or requirements of, the zone in which it is located.

The hearing examiner shall review and approve requests for alteration or enlargement of the use or structure through the conditional permit review procedures as set forth in Chapter 17.420. In no case shall the enlargement of these uses be allowed beyond the limits of existing contiguously owned parcels at the time of the passage of the amended ordinance.

B. This section does not apply to any use, building, or structure established in violation of any zoning ordinance previously in effect.

All uses in existence occurring on a specific parcel of land which legally qualified as a permitted unclassified use under the provisions of any former Kitsap County zoning ordinance, shall continue as conforming uses after the effective date of this title, provided, however, in no case shall any use be allowed to expand into adjoining or contiguous property without an approved zone change or conditional use permit, and further, any expansion on the original parcel shall comply with the standards contained in the zone within which the use is permitted.

(Ord. 415 (2008) § 214, 2008: Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.080 Pending long or short subdivisions.

Nothing herein shall require any change in the location, plans, construction, size or designated use of any residential plat, for which preliminary official approval has been granted prior to the adoption of this title.

(Ord. 234 (1999) § 2 (part), 1999: Ord. 216 (1998) § 4 (part), 1998)

17.455.090 Temporary permits.

The director may approve temporary permits, with conditions to mitigate negative impacts, valid for a period of not more than one

year after issuance, for temporary structures or uses which do not conform to this title.

Upon the expiration of the temporary permit, the applicant shall have thirty days within which to remove and/or discontinue such temporary use structure.

Upon approval, temporary permits may be issued for the following uses or structures:

A. Storage of equipment and materials during the building of roads or other developments;

B. Temporary storage of structures for the housing of tools and supplies used in conjunction with the building of roads or other developments;

C. Temporary office structures;

D. Temporary housing/construction living quarters for personnel such as watchmen, labor crews, engineering, and management; provided:

1. The building permit for the primary structure must have been issued;

2. The temporary dwelling must not be permanently placed on the site;

3. The temporary dwelling must meet the setback requirements of the zone in which it is located; and

4. For the purpose of constructing a single-family dwelling, temporary living quarters (for example, a recreational vehicle) may be permitted only in conjunction with a stick frame structure. This permit will remain active as long as the building permit for the single-family dwelling remains active.

E. Use of equipment essential to and only in conjunction with the construction or building of a road, bridge, ramp, dock, and/or jetty located in proximity to the temporary site; provided, that the applicant shall provide a construction contract or other evidence of the time period required to complete the project; and provided further, that the following equipment shall be considered essential to and in conjunction with such construction projects:

1. Portable asphaltic concrete-mixing plants.

KITSAP COUNTY PROSECUTOR
March 20, 2017 - 2:55 PM
Transmittal Letter

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Case Name: Kitsap County v. Kitsap Rifle and Revolver Club

Court of Appeals Case Number: 48781-1

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☒ Brief: Respondent's

Statement of Additional Authorities

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Objection to Cost Bill

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Response to Personal Restraint Petition

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Petition for Review (PRV)

Other: ____

Comments:

Response Brief of Appellee Kitsap County

Sender Name: Batrice K Fredsti - Email: bfredsti@co.kitsap.wa.us